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Mineral Resources

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PART 700 TO END
Revised as of July 1, 1986

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thus: **30 CFR 700.1**

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The Code of Federal Regulations is a codification of the general and permanent rules published in the Federal Register by the Executive departments and agencies of the Federal Government. The Code is divided into 50 titles which represent broad areas subject to Federal regulation. Each title is divided into chapters which usually bear the name of the issuing agency. Each chapter is further subdivided into parts covering specific regulatory areas.

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Each volume of the Code is revised at least once each calendar year and issued on a quarterly basis approximately as follows:

Title 1 through Title 16	as of January 1
Title 17 through Title 27	as of April 1
Title 28 through Title 41	as of July 1
Title 42 through Title 50	as of October 1

The appropriate revision date is printed on the cover of each volume.

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III). A list of CFR Titles, Chapters, and Parts and an alphabetical list of agencies publishing in the CFR are also included in this volume.

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JOHN E. BYRNE,
Director,
Office of the Federal Register.

July 1, 1986.

THIS TITLE

Title 30—MINERAL RESOURCES is composed of three volumes. The parts in these volumes are arranged in the following order: Parts 0 to 199, Parts 200 to 699, and Part 700 to End. The contents of these volumes represent all current regulations codified under this title of the CFR as of July 1, 1986.

For this volume, Lygia Thomas, Doris M. O'Keefe and Beverly Fayson were Editors. The Code of Federal Regulations publication program is under the direction of Martha B. Girard, assisted by Robert E. Jordan.

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Title 30—Mineral Resources

(This book contains Part 700 to End)

Part

CHAPTER VII—Office of Surface Mining Reclamation and Enforcement, Department of the Interior 700

CROSS REFERENCES:

Bureau of Land Management, Department of the Interior, regulations with respect to mineral lands: 43 CFR, Chapter II, Subchapter C.
Foreign Trade Statistics, Bureau of the Census, Department of Commerce: 15 CFR Part 30.
Forest Service regulations relating to mineral developments and mining in national forests: 36 CFR Part 251.
General Services Administration regulations for stockpiling of strategic and critical materials: 41 CFR Chapter 101, Subchapter C.
General Services Administration regulations with respect to reservation of minerals essential in the production of fissionable material: 41 CFR Part 101-47.
Interstate Commerce Commission: 49 CFR Chapter X.
Bureau of Indian Affairs, Department of the Interior, energy and minerals regulations: 25 CFR Chapter I, Subchapter I.

EDITORIAL NOTE: Other regulations issued by the Department of the Interior appear in Title 18, Chapter IV; Title 25, Chapters I and II; Title 36, Chapter I; Title 48, Chapter 14; Title 43; and Title 50, Chapter I.

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PART 700—GENERAL

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SOURCE: 44 FR 15313, Mar. 13, 1979, unless otherwise noted.

§ 700.1 Scope.

The regulations in Chapter VII of 30 CFR, consisting of Parts 700 through 899, establish the procedures through which the Secretary of the Interior will implement the Surface Mining Control and Reclamation Act of 1977 (Pub. L. 95-87, 91 Stat. 445 (30 U.S.C. 1201 *et. seq.*)). Chapter VII is divided into 13 subchapters.

(a) Subchapter A contains introductory information intended to serve as a guide to the rest of the chapter and to the regulatory requirements and definitions generally applicable to the programs and persons covered by the Act.

(b) Subchapter B contains regulations covering the initial regulatory program which apply before the applicability of permanent program regulations to persons conducting surface coal mining and reclamation operations and other persons covered by the Act.

(c) Subchapter C sets forth regulations covering applications for and decisions on permanent State programs; the process to be followed for substituting a Federal program for an approved State program, if necessary; the process for assuming temporary Federal enforcement of an approved State program; and the process for implementing a Federal program in a State when required by the Act.

(d) Subchapter D of this chapter identifies the procedures that apply to surface coal mining and reclamation operations conducted on Federal lands rather than State or private lands and incorporates by reference the requirements of the applicable regulatory program and the inspection and enforcement requirements of Subchapter L of this chapter.

(e) Subchapter E of this chapter contains regulations that apply to surface coal mining and reclamation operations conducted on Indian lands.

(f)(1) Subchapter F implements the requirements of the Act for —

(i) Designating lands which are unsuitable for all or certain types of surface coal mining operations;

(ii) Terminating designations no longer found to be appropriate; and

(iii) Prohibiting surface coal mining and reclamation operations on those lands or areas where the Act states that surface coal mining operations should not be permitted or should be permitted only after specified determinations are made.

(2) Subchapter F does not include regulations governing designation of areas unsuitable for noncoal mining under the terms of section 601 of the Act or the designation of Federal lands under the Federal lands review provisions of section 522(b) of the Act. The Bureau of Land Management of the Department of the Interior is responsible for these provisions which will be implemented when promulgated by regulations in Title 43 of the Code of Federal Regulations.

(g) Subchapter G governs applications for and decisions on permits for surface coal mining and reclamation operations on non-Indian and non-Federal lands under a State or Federal program. It also governs coal exploration and permit application and decisions on permits for special categories of coal mining on non-Indian and non-Federal lands under a State or Federal program. Regulations implementing the experimental practices provision of the Act are also included in Subchapter G.

(h) Subchapter J sets forth requirements for performance bonds and public liability insurance for both surface mining and underground mining activities.

(i) Subchapter K sets forth the environmental and other performance standards which apply to coal exploration and to surface coal mining and reclamation operations during the permanent regulatory program. The regulations establish the minimum requirements for operations under State and Federal programs. Performance standards applicable to special mining situations such as anthracite mines, steep slope mining, alluvial valley floors, and prime farmlands are included.

(j) Subchapter L sets forth the inspection, enforcement, and civil penalty provisions that apply to a State, Federal, or Federal lands program.

(k) Subchapter M sets forth the requirements for the training, examination, and certification of blasters.

(l) Subchapter P sets forth the provisions for protection of employees who initiate proceedings under the Act or testify in any proceedings resulting from the administration or enforcement of the Act.

(m) Subchapter R sets forth the regulations for the abandoned mine land reclamation program. These regulations include the fee collection requirements and the mechanisms for implementing the State and Federal portions of the abandoned mine land reclamation program.

(n) Subchapter S sets forth the regulations that apply to grants for mining and mineral research institutes and grants for mineral research projects.

(30 U.S.C. 1201 *et seq.*)

[44 FR 15313, Mar. 13, 1979, as amended at 48 FR 6934, Feb. 16, 1983; 49 FR 38477, Sept. 28, 1984]

§ 700.2 Objective.

The objective of Chapter VII is to fulfill the purposes of the Act found in section 102 in a manner which is consistent with the language of the Act, its legislative history, other applicable laws, and judicial interpretations.

§ 700.3 Authority.

The Secretary is authorized to administer the requirements of the Act, except the following:

(a) Provisions of the Act that authorize the Secretary of Agriculture to establish programs for the reclamation of rural lands, identification of prime agricultural lands, and other responsibilities described in the Act. Regulations promulgated by the Secretary of Agriculture are in 7 CFR;

(b) Provisions of the Act for which responsibility is specifically assigned to other Federal agencies, including the Department of Labor, the Environmental Protection Agency, the Corps of Engineers, the Council on Environmental Quality, and the Department of Energy; and

(c) Authority retained by the States to enforce State laws or regulations which are not inconsistent with the Act and this chapter, including the authority to enforce more stringent land use and environmental controls and regulations.

§ 700.4 Responsibility.

(a) The Director of the Office of Surface Mining Reclamation and Enforcement, under the general direction of the Assistant Secretary, Energy and Minerals, is responsible for exercising the authority of the Secretary, except for the following:

(1) Approval, disapproval or withdrawal of approval of a State program and implementation of a Federal program. The Director is responsible for exercising the authority of the Secretary to substitute Federal enforcement of a State program under section 521(b) of the Act.

(2) Designation of non-Federal lands or Federal lands without the concurrence of the Federal surface managing agency as unsuitable for all or certain types of surface coal mining operations under section 522 of the Act and as unsuitable for non-coal mining under section 601 of the Act; and

(3) Authority to approve or disapprove mining plans to conduct surface coal mining and reclamation operations on Federal lands.

(b) The Director is responsible for consulting with Federal land-managing agencies and Federal agencies with responsibility for natural and historic resources on Federal lands on actions which may have an effect on their responsibilities.

(c) The States are responsible for the regulation of surface coal mining and reclamation operations under the initial regulatory program and surface coal mining and reclamation operations and coal exploration under an approved State program and the reclamation of abandoned mine lands under an approved State Reclamation Plan on non-Federal and non-Indian lands in accordance with procedures in this chapter.

(d) The Secretary may delegate to a State through a cooperative agreement certain authority relating to the regulation of surface coal mining and reclamation operations on Federal lands in accordance with 30 CFR Part 745.

(e) The Director, Office of Hearings and Appeals, U.S. Department of the Interior, is responsible for the administration of administrative hearings and appeals required or authorized by the Act pursuant to the regulations in 43 CFR Part 4.

[44 FR 15313, Mar. 13, 1979; 44 FR 49684, Aug. 24, 1979]

§ 700.5 Definitions.

As used throughout this chapter, the following terms have the specified meaning except where otherwise indicated —

Act means the Surface Mining Control and Reclamation Act of 1977 (Pub. L. 95-87).

Anthracite means coal classified as anthracite in ASTM Standard D 388-77. Coal classifications are published by the American Society of Testing and Materials under the title, *Standard Specification for Classification of Coals by Rank*, ASTM D 388-77, on pages 220 through 224. Table 1 which classifies the coals by rank is presented on page 223. This publication is hereby incorporated by reference as it exists on the date of adoption of these regulations. Notices of changes made to this publication will be periodically published by the Office of Surface Mining in the FEDERAL REGISTER. This ASTM Standard is on file and available for inspection at the OSM Office, U.S. Department of the Interior, South Interior Building, Washington, D.C. 20240, at each OSM Regional Office, District Office and Field Office, and at the central office of the applicable State Regulatory Authority, if any. Copies of this publication may also be obtained by writing to the above locations. A copy of this publication will also be on file for public inspection at the Federal Register Library, 1100 L St., N.W., Washington, D.C. Incorporation by reference provisions approved by the Director of the FEDERAL REGISTER February 7, 1979. The Director's approval of this incorporation by reference expires on July 1, 1981.

Coal means combustible carbonaceous rock, classified as anthracite, bituminous, subbituminous, or lignite by ASTM Standard D 388-77, referred to and incorporated by reference in the definition of "anthracite" immediately above.

Department means the Department of the Interior.

Director means the Director, Office of Surface Mining Reclamation and Enforcement, or the Director's representative.

Federal lands means any land, including mineral interests, owned by the United States, without regard to how the United States acquired ownership of the lands or which agency manages the lands. It does not include Indian lands. However, lands or mineral interests east of the 100th meridian west longitude owned by the United States and entrusted to or managed by the Tennessee Valley Authority are not subject to sections 714 (surface owner protection) and 715 (Federal lessee protection) of the Act.

Federal lands program means a program established by the Secretary pursuant to section 523 of the Act to regulate surface coal mining and reclamation operations on Federal lands.

Fund means the Abandoned Mine Reclamation Fund established pursuant to section 401 of the Act.

Indian lands means all lands, including mineral interests, within the exterior boundaries of any Federal Indian reservation, notwithstanding the issuance of any patent, and including rights-of-way, and all lands including mineral interests held in trust for or supervised by an Indian tribe.

Indian tribe means any Indian tribe, band, group, or community having a governing body recognized by the Secretary.

Office means the Office of Surface Mining Reclamation and Enforcement established under Title II of the Act.

Person means an individual, Indian tribe when conducting surface coal mining and reclamation operations on non-Indian lands, partnership, association, society, joint venture, joint stock company, firm, company, corporation, cooperative or other business organization and any agency, unit, or instrumentality of Federal, State or local government including any publicly owned utility or publicly owned corporation of Federal State or local government.

Person having an interest which is or may be adversely affected or *person with a valid legal interest* shall include any person—

(a) Who uses any resource of economic, recreational, esthetic, or environmental value that may be adversely affected by coal exploration or surface coal mining and reclamation operations or any related action of the Secretary or the State regulatory authority; or

(b) Whose property is or may be adversely affected by coal exploration or surface coal mining and reclamation operations or any related action of the Secretary or the State regulatory authority.

Public office means a facility under the direction and control of a governmental entity which is open to public access on a regular basis during reasonable business hours.

Regional Director means a Regional Director of the Office or a Regional Director's representative.

Regulatory authority means the department or agency in each State which has primary responsibility at the State level for administering the Act in the initial program, or the State regulatory authority where the State is administering the Act under a State regulatory program, or the Secretary in the initial or permanent program where the Secretary is administering the Act, or the Secretary when administering a Federal program or Federal lands program or when enforcing a State program pursuant to section 521(b) of the Act.

Regulatory program means any approved State or Federal program or, in a State with no approved State or Federal program and coal exploration and surface coal mining and reclamation operations are on Federal lands, the requirements of Subchapters A, F, G, J, K, L, M, and P of this chapter.

Secretary means the Secretary of the Interior or the Secretary's representative.

State regulatory authority means the department or agency in each State which has primary responsibility at the State level for administering the initial or permanent State regulatory program.

Surface coal mining operations means—

(a) Activities conducted on the surface of lands in connection with a surface coal mine or, subject to the requirements of section 516 of the Act, surface operations and surface impacts incident to an underground coal mine, the products of which enter commerce or the operations of which directly or indirectly affect interstate commerce. Such activities include excavation for the purpose of obtaining coal, including such common methods as contour, strip, auger, mountaintop removal, box cut, open pit, and area mining; the use of explosives and blasting; in-situ distillation or retorting; leaching or other chemical or physical processing; and the cleaning, concentrating, or other processing or preparation of coal. Such activities also include the loading of coal for interstate commerce at or near the mine site. *Provided*, these activities do not include the extraction of coal incidental to the extraction of other minerals, where coal does not exceed 16⅔ percent of the tonnage of minerals removed for purposes of commercial use or sale, or coal exploration subject to section 512 of the Act; and, *Provided further*, that excavation for the purpose of obtaining coal includes extraction of coal from coal refuse piles; and

(b) The areas upon which the activities described in paragraph (a) of this definition occur or where such activities disturb the natural land surface. These areas shall also include any adjacent land the use of which is incidental to any such activities, all lands affected by the construction of new roads or the improvement or use of existing roads to gain access to the site of those activities and for haulage and excavation, workings, impoundments, dams, ventilation shafts, entryways, refuse banks, dumps, stockpiles, overburden piles, spoil banks, culm banks, tailings, holes or depressions, repair areas, storage areas, processing areas, shipping areas, and other areas upon which are sited structures, facilities, or other property or material on the surface, resulting from or incident to those activities.

Surface coal mining and reclamation operations means surface coal mining operations and all activities necessary or incidental to the reclamation of such operations. This term includes the term surface coal mining operations.

Ton means 2000 pounds avoirdupois (.90718 metric ton).

(30 U.S.C. 1201 *et seq.*)

[44 FR 15313, Mar. 13, 1979; 44 FR 49684, Aug. 24, 1979, as amended at 45 FR 54753, Aug. 18, 1980; 48 FR 6934, Feb. 16, 1983; 48 FR 20400, May 5, 1983; 50 FR 28189, July 10, 1985]

§ 700.10 Information collection.

Since the information collection requirements contained in 30 CFR 700.12(b) and 700.13 have fewer than 10 respondents per year, they are exempt from the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) and do not require clearance by OMB.

(30 U.S.C. 1201 *et seq.*)

[47 FR 33684, Aug. 4, 1982]

§ 700.11 Applicability.

(a) Except as provided in paragraph (b) of this section, this chapter applies to all coal exploration and surface coal mining and reclamation operations, except:

(1) The extraction of coal by a landowner for his or her own noncommercial use from land owned or leased by him or her. Noncommercial use does not include the extraction of coal by one unit of an integrated company or other business or nonprofit entity which uses the coal in its own manufacturing or power plants;

(2) The extraction of 250 tons of coal or less by a person conducting a surface coal mining and reclamation operation. A person who intends to remove more than 250 tons is not exempted;

(3) The extraction of coal as an incidental part of Federal, State or local government-financed highway or other construction in accordance with Part 707 of this chapter;

(4) The extraction of coal incidental to the extraction of other minerals where coal does not exceed 16⅔ percent of the mineral tonnage removed for commercial use or sale;

(5) Coal exploration on lands subject to the requirement of 43 CFR Parts 3480-3487.

(b) This chapter does not apply to the extraction of coal for commercial purposes where the surface coal mining and reclamation operation, together with any related operations, has or will have an affected area of two acres or less. For purposes of this paragraph:

(1) Where a segment of a road is used for access or coal haulage by more than one surface coal mining operation, the entire segment shall be included in the affected area of each of those operations; provided, that two or more operations which are deemed related pursuant to paragraph (b)(2) of this section shall be considered as one operation for purposes of this paragraph.

(2) Except as provided in paragraph (b)(3) of this section, surface coal mining operations shall be deemed related if they occur within twelve months of each other, are physically related, and are under common ownership or control.

(i) Operations shall be deemed physically related if drainage from both operations flows into the same watershed at or before a point within five aerial miles of either operation.

(ii) Operations shall be deemed under common ownership or control if they are owned or controlled, directly or indirectly, by or on behalf of:

(A) The same person;

(B) Two or more persons, one of whom controls, is under common control with, or is controlled by the other; or

(C) Members of the same family and their relatives, unless it is established that there is no direct or indirect business relationship between or among them;

(iii) For purposes of this paragraph, "control" means: ownership of 50 percent or more of the voting shares of, or general partnership in, an entity; any relationship which gives one person the ability in fact or law to direct what the other does; or any relationship which gives one person express or implied authority to determine the manner in which coal at different sites will be mined, handled, sold or disposed of.

(3) Notwithstanding the provisions of paragraph (b)(2) of this section, the regulatory authority may determine, in accordance with the procedures applicable to requests for determination of exemption pursuant to paragraph (c) of this section, that two or more surface coal mining operations shall not be deemed related if, considering the history and circumstances relating to the coal, its location, the operations at the sites in question, all related operations and all persons mentioned in paragraph (b)(2)(ii) of this section, the regulatory authority concludes in writing that the operations are not of the type which the Act was intended to regulate and that there is no intention on the part of such operations or persons to evade the requirements of the Act or the applicable regulatory program.

(4) The exemption provided by paragraph (b) of this section applies only to operations with an affected area of less than two acres where coal is being extracted for commercial purposes and to surface coal mining operations within that affected area incidental to such operations.

(c) The regulatory authority may on its own initiative and shall, within a reasonable time of a request from any person who intends to conduct surface coal mining operations, make a written determination whether the operation is exempt under this section. The regulatory authority shall give reasonable notice of the request to interested persons. Prior to the time a determination is made, any person may submit, and the regulatory authority shall consider, any written information relevant to the determination. A person requesting that an operation be declared exempt shall have the burden of establishing the exemption. If a written determination of exemption is reversed through subsequent administrative or judicial action, any person who, in good faith, has made a complete and accurate request for an exemption and relied upon the determination, shall not be cited for violations which occurred prior to the date of the reversal.

(30 U.S.C. 1201 et. seq.)

[47 FR 33431, July 2, 1982, as amended at 48 FR 40634, Sept. 8, 1983; 48 FR 44779, Sept. 30, 1983; 49 FR 38477, Sept. 28, 1984]

§ 700.12 Petitions to initiate rulemaking.

(a) Any person may petition the Director to initiate a proceeding for the issuance, amendment, or repeal of any regulation under the Act. The petition shall be submitted to the Office of the Director, Office of Surface Mining Reclamation and Enforcement, Department of the Interior, Washington, D.C. 20240.

(b) The petition shall be a concise statement of the facts, technical justification, and law which require issuance, amendment, or repeal of a regulation under the Act and shall indicate whether the petitioner desires a public hearing.

(c) Upon receipt of the petition, the Director shall determine if the petition sets forth facts, technical justification and law which may provide a reasonable basis for issuance, amendment or repeal of a regulation. Facts, technical justification or law previously considered in a petition or rulemaking on the same issue shall not provide a reasonable basis. If the Director determines that the petition has a reasonable basis, a notice shall be published in the FEDERAL REGISTER seeking comments from the public on the proposed change. The Director may hold a public hearing, may conduct an investigation or take other action to determine whether the petition should be granted.

(d) Within 90 days from receipt of the petition, the Director shall issue a written decision either granting or denying the petition. The Director's decision shall constitute the final decision for the Department.

(1) If the petition is granted, the Director shall initiate a rulemaking proceeding.

(2) If the petition is denied, the Director shall notify the petitioner in writing, setting forth the reasons for denial.

§ 700.13 Notice of citizen suits.

(a) A person who intends to initiate a civil action on his or her own behalf under section 520 of the Act shall give notice of intent to do so, in accordance with this section.

(b) Notice shall be given by certified mail to the Secretary and the Director in all cases and to the head of the State regulatory authority, if a complaint involves or relates to a specific State. A copy of the notice shall be sent by first class mail to the Regional Director, if the complaint involves or relates to surface coal mining and reclamation operations in a specific region of the Office.

(c) Notice shall be given by certified mail to the alleged violator, if the complaint alleges a violation of the Act or any regulation, order, or permit issued under the Act.

(d) Service of notice under this section is complete upon mailing to the last known address of the person being notified.

(e) A person giving notice regarding an alleged violation shall state, to the extent known—

(1) Sufficient information to identify the provision of the Act, regulation, order, or permit allegedly violated;

(2) The act or omission alleged to constitute a violation;

(3) The name, address, and telephone numbers of the person or persons responsible for the alleged violation;

(4) The date, time, and location of the alleged violation;

(5) The name, address, and telephone number of the person giving notice; and

(6) The name, address, and telephone number of legal counsel, if any, of the person giving notice.

(f) A person giving notice of an alleged failure by the Secretary or a State regulatory authority to perform a mandatory act or duty under the Act shall state, to the extent known:

(1) The provision of the Act containing the mandatory act or duty allegedly not performed;

(2) Sufficient information to identify the omission alleged to constitute the failure to perform a mandatory act or duty under the Act;

(3) The name, address, and telephone number of the person giving notice; and

(4) The name, address, and telephone number of legal counsel, if any, of the person giving notice.

§ 700.14 Availability of records.

(a) Records required by the Act to be made available locally to the public shall be retained at the geographically closest office of the State or Federal regulatory authority having jurisdiction over the area involved.

(b) Other records or documents in the possession of the Office may be requested under 43 CFR Part 2, which implements the Freedom of Information Act and the Privacy Act.

§ 700.15 Computation of time.

(a) Except as otherwise provided, computation of time under this chapter is based on calendar days.

(b) In computing any period of prescribed time, the day on which the designated period of time begins is not included. The last day of the period is included unless it is a Saturday, Sunday, or legal holiday on which the regulatory authority is not open for business, in which event the period runs until the end of the next day which is not a Saturday, Sunday, or legal holiday.

(c) Intermediate Saturdays, Sundays, and legal holidays are excluded from the computation when the period of prescribed time is 7 days or less.

PART 701—PERMANENT REGULATORY PROGRAM

Sec.
701.1 Scope.
701.2 Objective.
701.3 Authority.
701.4 Responsibility.
701.5 Definitions.
701.11 Applicability.

AUTHORITY: Secs. 102, 201, 501-529, 701, 702, 705, 708, 711, 713, 714, 715, 716, 717, 719, Pub. L. 95-87, 91 Stat. 448, 449, 467-515, 516, 519, 520, 521, 523, 524, 525, and 526 (30 U.S.C. 1202, 1211, 1251-1279, 1291, 1292, 1295, 1298, 1301, 1303, 1304, 1305, 1306, 1307, and 1309).

SOURCE: 44 FR 15316, Mar. 13, 1979, unless otherwise noted.

§ 701.1 Scope.

(a) This part provides general introductory material for the permanent regulatory program required by the Act.

(b) The following regulations apply to the permanent regulatory program:

(1) Subchapter C on State program application, approval, withdrawal, and grants, and Federal program implementation;

(2) Subchapter D on surface coal mining and reclamation operations on Federal lands;

(3) Subchapter E on surface coal mining and reclamation operations on Indian lands.

(4) Subchapter F on criteria for designating lands unsuitable for surface coal mining operations and the process for designating these lands or withdrawing the designation by the regulatory authority; *Provided*, That, Part 761 is applicable during the initial regulatory program under Subchapter B of this chapter and 30 CFR Part 211[1] and that Part 769 and other parts incorporated therein are applicable to the initial Federal lands program under 30 CFR Part 211;[1]

(5) Subchapter G on the process for application, approval, denial, revision, and renewal of permits for surface coal mining and reclamation operations, including the small operator assistance program, requirements for special categories of these operations, and requirements for coal exploration;

(6) Subchapter J on public liability insurance and performance bonds or other assurances of performance for surface coal mining and reclamation operations;

(7) Subchapter K on performance standards which apply to coal exploration, surface coal mining and reclamation operations, and special categories of these operations;

(8) Subchapter L on inspection and enforcement responsibilities and civil penalties; and

(9) Subchapter M on the training, examination, and certification of blasters.

[44 FR 15316, Mar. 13, 1979; 44 FR 49685, Aug. 24, 1979, as amended at 44 FR 77445, Dec. 31, 1979; 49 FR 38477, Sept. 28, 1984]

§ 701.2 Objective.

The regulations in this part give—

(a) A general overview of the regulatory program to be implemented by the State or Federal regulatory authority;

(b) The applicability of that program to coal exploration and surface coal mining and reclamation operations; and

(c) The definitions that apply to the regulation of coal exploration and surface coal mining and reclamation operations.

§ 701.3 Authority.

The Secretary is required by section 501(b) of the Act to promulgate regulations which establish the permanent regulatory program; by section 523 of the Act to promulgate regulations which establish the Federal lands programs; and is authorized by section 710 of the Act to promulgate regulations which establish a Federal program for Indian lands.

[49 FR 38477, Sept. 28, 1984]

§ 701.4 Responsibility.

(a) A State regulatory authority shall assume primary responsibility for regulation of coal exploration and surface coal mining and reclamation operations during the permanent regulatory program upon submission to and approval by the Secretary of a

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[1] Editorial Note: 30 CFR Part 211 was redesignated as 43 CFR Part 3480 at 48 FR 41589, Sept. 16, 1983.

State program meeting all applicable requirements of the Act and this chapter. After approval of the State program, the State regulatory authority has responsibility for review of and decisions on permits and bonding for surface coal mining and reclamation operations, approval of coal exploration which substantially disturbs the natural land surface and removes more than 250 tons of coal from the earth in any one location, inspection of coal exploration and surface coal mining and reclamation operations for compliance with the Act, this chapter, the State program, permits and exploration approvals, and for enforcement of the State program.

(b) While a State regulatory program is in effect, the Office's responsibility includes, but is not limited to —

(1) Evaluating the administration of the State program through such means as periodic inspections of coal exploration and surface coal mining and reclamation operations in the State and review of exploration approvals, permits, inspection reports, and other documents required to be made available to the Office;

(2) Referring to the State regulatory authority information which creates reasonable belief that a person is in violation of the Act, this chapter, the State regulatory program, a permit condition, or coal exploration approval condition, and initiating an inspection when authorized by the Act or this chapter;

(3) Issuing notices of violation when a State regulatory authority fails to take appropriate action to cause a violation to be corrected; and

(4) Issuing cessation orders, including imposing affirmative obligations, when a condition, practice, or violation exists which creates an imminent danger to the health or safety of the public, or is causing or could reasonably be expected to cause significant, imminent environmental harm to land, air, or water resources.

(c) The Office shall implement a Federal program in a State, if that State does not have an approved State program by June 3, 1980. The Office shall not implement a Federal program in a State for a period of up to 1 year following that date if the State's failure to have an approved program by that date is due to an injunction imposed by a court of competent jurisdiction.

(d) Under a Federal program, the Office shall be the regulatory authority for all coal exploration and surface coal mining and reclamation operations in that State and shall perform the functions that a State regulatory authority would perform under an approved State program.

(e) During the period in which a State program is in effect, the Office shall assume responsibility for enforcing permit conditions, issuing new or revised permits, and issuing necessary notices and orders, when required by 30 CFR Part 733.

(f) The Secretary shall substitute a Federal program under 30 CFR Part 736 for an approved State program, when required by 30 CFR Part 733.

(g) The Secretary shall have the responsibility for administration of the Federal lands program. The Director and other Federal authorities shall have the responsibilities under a Federal lands program as are provided for under Subchapter D of this chapter. In addition, State regulatory authorities shall have responsibilities to administer the Federal lands program as provided for under cooperative agreements approved by the Secretary in accordance with 30 CFR Part 745.

(h) The Secretary shall have the responsibility for the administration of the Federal program for Indian lands, as provided for under Subchapter E of this chapter. The Director and other Federal authorities have the responsibilities under the Indian lands program as are provided for under Subchapter E of this chapter.

[44 FR 15316, Mar. 13, 1979, as amended at 49 FR 38477, Sept. 28, 1984]

§ 701.5 Definitions.

As used in this chapter, the following terms have the specified meanings, except where otherwise indicated:

Acid drainage means water with a pH of less than 6.0 and in which total acidity exceeds total alkalinity, discharged from an active, inactive or abandoned surface coal mine and reclamation operation or from an area affected by surface coal mining and reclamation operations.

Acid-forming materials means earth materials that contain sulfide minerals or other materials which, if exposed to air, water, or weathering processes, form acids that may create acid drainage.

Adjacent area means the area outside the permit area where a resource or resources, determined according to the context in which *adjacent area* is used, are or reasonably could be expected to be adversely impacted by proposed mining operations, including probable impacts from underground workings.

Administratively complete application means an application for permit approval or approval for coal exploration where required, which the regulatory authority determines to contain information addressing each application requirement of the regulatory program and to contain all information necessary to initiate processing and public review.

Adverse physical impact means, with respect to a highwall created or impacted by remining, conditions, such as sloughing of material, subsidence, instability, or increased erosion of highwalls, which occur or can reasonably be expected to occur as a result of remining and which pose threats to property, public health, safety, or the environment.

Affected area means any land or water surface area which is used to facilitate, or is physically altered by, surface coal mining and reclamation operations. The affected area includes the disturbed area; any area upon which surface coal mining and reclamation operations are conducted; any adjacent lands the use of which is incidental to surface coal mining and reclamation operations; all areas covered by new or existing roads used to gain access to, or for hauling coal to or from, surface coal mining and reclamation operations, except as provided in this definition; any area covered by surface excavations, workings, impoundments, dams, ventilation shafts, entryways, refuse banks, dumps, stockpiles, overburden piles, spoil banks, culm banks, tailings, holes or depressions, repair areas, storage areas, shipping areas; any areas upon which are sited structures, facilities, or other property material on the surface resulting from, or incident to, surface coal mining and reclamation operations; and the area located above underground workings. The affected area shall include every road used for purposes of access to, or for hauling coal to or from, surface coal mining and reclamation operations, unless the road (a) was designated as a public road pursuant to the laws of the jurisdiction in which it is located; (b) is maintained with public funds, and constructed, in a manner similar to other public roads of the same classification within the jurisdiction; and (c) there is substantial (more than incidental) public use.

Agricultural activities or *farming* means, with respect to alluvial valley floors, the use of any tract of land for the production of animal or vegetable life, based on regional agricultural practices, where the use is enhanced or facilitated by subirrigation or flood irrigation. These uses include, but are not limited to, the pasturing or grazing of livestock, and the cropping, cultivation, or harvesting of plants whose production is aided by the availability of water from subirrigation or flood irrigation. These uses do not include agricultural activities which have no relationship to the availability of water from subirrigation or flood irrigation practices.

Agricultural use means the use of any tract of land for the production of animal or vegetable life. The uses include, but are not limited to, the pasturing, grazing, and watering of livestock, and the cropping, cultivation, and harvesting of plants.

Alluvial valley floors means the unconsolidated stream-laid deposits holding streams with water availability sufficient for subirrigation or flood irrigation agricultural activities but does not include upland areas which are generally overlain by a thin veneer of colluvial deposits composed chiefly of debris from sheet erosion, deposits formed by unconcentrated runoff or slope wash, together with talus, or other mass-movement accumulations, and windblown deposits.

Applicant means any person seeking a permit, permit revision, renewal, and transfer, assignment, or sale of permit rights from a regulatory authority to conduct surface coal mining and reclamation operations or, where required, seeking approval for coal exploration.

Application means the documents and other information filed with the regulatory authority under this chapter for the issuance of permits; revisions; renewals; and transfer, assignment, or sale of permit rights for surface coal mining and reclamation operations or, where required, for coal exploration.

Approximate original contour means that surface configuration achieved by backfilling and grading of the mined areas so that the reclaimed area, including any terracing or access roads, closely resembles the general surface configuration of the land prior to mining and blends into and complements the drainage pattern of the surrounding terrain, with all highwalls, spoil piles and coal refuse piles eliminated. Permanent water impoundments may be permitted where the regulatory authority has determined that they comply with 30 CFR 816.49 and 816.56, 816.133 or 817.49, 817.56, and 817.133.

Aquifer means a zone, stratum, or group of strata that can store and transmit water in sufficient quantities for a specific use.

Arid and semiarid area means, in the context of alluvial valley floors, an area of the interior western United States, west of the 100th meridian west longitude, experiencing water deficits, where water use by native vegetation equals or exceeds that supplied by precipitation. All coalfields located in North Dakota west of the 100th meridian west longitude, all coalfields in Montana, Wyoming, Utah, Colorado, New Mexico, Idaho, Nevada, and Arizona, the Eagle Pass field in Texas, and the Stone Canyon and the Ione fields in California are in arid and semiarid areas.

Auger mining means a method of mining coal at a cliff or highwall by drilling holes into an exposed coal seam from the highwall and transporting the coal along an auger bit to the surface.

Best technology currently available means equipment, devices, systems, methods, or techniques which will (a) prevent, to the extent possible, additional contributions of suspended solids to stream flow or runoff outside the permit area, but in no event result in contributions of suspended solids in excess of requirements set by applicable State or Federal laws; and (b) minimize, to the extent possible, disturbances and adverse impacts on fish, wildlife and related environmental values, and achieve enhancement of those resources where practicable. The term includes equipment, devices, systems, methods, or techniques which are currently available anywhere as determined by the Director, even if they are not in routine use. The term includes, but is not limited to, construction practices, siting requirements, vegetative selection and planting requirements, animal stocking requirements, scheduling of activities and design of sedimentation ponds in accordance with 30 CFR Parts 816 and 817. Within the constraints of the permanent program, the regulatory authority shall have the discretion to determine the best technology currently available on a case-by-case basis, as authorized by the Act and this chapter.

Coal exploration means the field gathering of: (a) surface or subsurface geologic, physical, or chemical data by mapping, trenching, drilling, geophysical, or other techniques necessary to determine the quality and quantity of overburden and coal of an area; or (b) the gathering of environmental data to establish the conditions of an area before beginning surface coal mining and reclamation operations under the requirements of this chapter.

Coal mine waste means coal processing waste and underground development waste.

Coal preparation means chemical or physical processing and the cleaning, concentrating, or other processing or preparation of coal.

Coal preparation plant means a facility where coal is subjected to chemical or physical processing or the cleaning, concentrating, or other processing or preparation. It includes facilities associated with coal preparation activities, including, but not limited to the following: loading facilities; storage and stockpile facilities; sheds; shops, and other buildings; water-treatment and water-storage facilities; settling basins and impoundments; and coal processing and other waste disposal areas.

Coal processing waste means earth materials which are separated and wasted from the product coal during cleaning, concentrating, or other processing or preparation of coal.

Combustible material means organic material that is capable of burning, either by fire or through oxidation, accompanied by the evolution of heat and a significant temperature rise.

Compaction means increasing the density of a material by reducing the voids between the particles and is generally accomplished by controlled placement and mechanical effort such as from repeated application of wheel, track, or roller loads from heavy equipment.

Complete and accurate application means an application for permit approval or approval for coal exploration where required, which the regulatory authority determines to contain all information required under the Act, this subchapter, and the regulatory program that is necessary to make a decision on permit issuance.

Cropland means land used for the production of adapted crops for harvest, alone or in a rotation with grasses and legumes, and includes row crops, small grain crops, hay crops, nursery crops, orchard crops, and other similar specialty crops.

Cumulative impact area means the area, including the permit area, within which impacts resulting from the proposed operation may interact with the impacts of all anticipated mining on surface- and ground-water systems. Anticipated mining shall include, at a minimum, the entire projected lives through bond releases of: (a) The proposed operation, (b) all existing operations, (c) any operation for which a permit application has been submitted to the regulatory authority, and (d) all operations required to meet diligent development requirements for leased Federal coal for which there is actual mine development information available.

Disturbed area means an area where vegetation, topsoil, or overburden is removed or upon which topsoil, spoil, coal processing waste, underground development waste, or noncoal waste is placed by surface coal mining operations. Those areas are classified as *disturbed* until reclamation is complete and the performance bond or other assurance of performance required by Subchapter J of this chapter is released.

Diversion means a channel, embankment, or other manmade structure constructed to divert water from one area to another.

Downslope means the land surface between the projected outcrop of the lowest coalbed being mined along each highwall and a valley floor.

Embankment means an artificial deposit of material that is raised above the natural surface of the land and used to contain, divert, or store water, support roads or railways, or for other similar purposes.

Ephemeral stream means a stream which flows only in direct response to precipitation in the immediate watershed or in response to the melting of a cover of snow and ice, and which has a channel bottom that is always above the local water table.

Essential hydrologic functions means the role of an alluvial valley floor in collecting, storing, regulating, and making the natural flow of surface or ground water, or both, usefully available for agricultural activities by reason of the valley floor's topographic position, the landscape, and the physical properties of its underlying materials. A combination of these functions provides a water supply during extended periods of low precipitation.

Excess spoil means spoil material disposed of in a location other than the mined-out area; provided that spoil material used to achieve the approximate original contour or to blend the mined-out area with the surrounding terrain in accordance with §§ 816.102(d) and 817.102(d) of this chapter in non-steep slope areas shall not be considered excess spoil.

Existing structure means a structure or facility used in connection with or to facilitate surface coal mining and reclamation operations for which construction begins prior to the approval of a State program or implementation of a Federal program or Federal lands program, whichever occurs first.

Federal program means a program established by the Secretary pursuant to section 504 of the Act to regulate coal exploration and surface coal mining and reclamation operations on non-Federal and non-Indian lands within a State in accordance with the Act and this chapter.

(a) *Complete Federal program* means a program established by the Secretary pursuant to section 504 of the Act before June 3, 1980, or upon the complete withdrawal of a State program after June 3, 1980, by which the Director regulates all coal exploration and surface coal mining and reclamation operations.

(b) *Partial Federal program* means a program established by the Secretary pursuant to sections 102, 201 and 504 of the Act upon the partial withdrawal of a State program, by which the Director may regulate appropriate portions of coal exploration and surface coal mining and reclamation operations.

Flood irrigation means, with respect to alluvial valley floors, supplying water to plants by natural overflow or the diversion of flows, so that the irrigated surface is largely covered by a sheet of water.

Fugitive dust means that particulate matter not emitted from a duct or stack which becomes airborne due to the forces of wind or surface coal mining and reclamation operations or both. During surface coal mining and reclamation operations it may include emissions from haul roads; wind erosion of exposed surfaces, storage piles, and spoil piles; reclamation operations; and other activities in which material is either removed, stored, transported, or redistributed.

Gravity discharge means, with respect to underground mining activities, mine drainage that flows freely in an open channel downgradient. Mine drainage that occurs as a result of flooding a mine to the level of the discharge is not gravity discharge.

Ground cover means the area of ground covered by the combined aerial parts of vegetation and the litter that is produced naturally onsite, expressed as a percentage of the total area of measurement.

Ground water means subsurface water that fills available openings in rock or soil materials to the extent that they are considered water saturated.

Half-shrub means a perennial plant with a woody base whose annually produced stems die back each year.

Head-of-hollow fill means a fill structure consisting of any material, other than organic material, placed in the uppermost reaches of a hollow where side slopes of the existing hollow, measured at the steepest point, are greater than 20 degrees or the average slope of the profile of the hollow from the toe of the fill to the top of the fill is greater than 10 degrees. In head-of-hollow fills the top surface of the fill, when completed, is at approximately the same elevation as the adjacent ridge line, and no significant area of natural drainage occurs above the fill draining into the fill area.

Higher or better uses means postmining land uses that have a higher economic value or nonmonetary benefit to the landowner or the community than the premining land uses.

Highwall means the face of exposed overburden and coal in an open cut of a surface coal mining activity or for entry to underground mining activities.

Highwall remnant means that portion of highwall that remains after backfilling and grading of a remining permit area.

Historically used for cropland means (a) lands that have been used for cropland for any 5 years or more out of the 10 years immediately preceding the acquisition, including purchase, lease, or option, of the land for the purpose of conducting or allowing through resale, lease or option the conduct of surface coal mining and reclamation operations; (b) lands that the regulatory authority determines, on the basis of additional cropland history of the surrounding lands and the lands under consideration, that the permit area is clearly cropland but falls outside the specific 5-years-in-10 criterion, in which case the regulations for prime farmland may be applied to include more years of cropland history only to increase the prime farmland acreage to be preserved; or (c) lands that would likely have been used as cropland for any 5 out of the last 10 years, immediately preceding such acquisition but for the same fact of ownership or control of the land unrelated to the productivity of the land.

Hydrologic balance means the relationship between the quality and quantity of water inflow to, water outflow from, and water storage in a hydrologic unit such as a drainage basin, aquifer, soil zone, lake, or reservoir. It encompasses the dynamic relationships among precipitation, runoff, evaporation, and changes in ground and surface water storage.

Hydrologic regime means the entire state of water movement in a given area. It is a function of the climate and includes the phenomena by which water first occurs as atmospheric water vapor, passes into a liquid or solid form, falls as precipitation, moves along or into the ground surface, and returns to the atmosphere as vapor by means of evaporation and transpiration.

Imminent danger to the health and safety of the public means the existence of any condition or practice, or any violation of a permit or other requirements of the Act in a surface coal mining and reclamation operation, which could reasonably be expected to cause substantial physical harm to persons outside the permit area before the condition, practice, or violation can be abated. A reasonable expectation of death or serious injury before abatement exists if a rational person, subjected to the same condition or practice giving rise to the peril, would avoid exposure to the danger during the time necessary for abatement.

Impounding structure means a dam, embankment or other structure used to impound water, slurry, or other liquid or semi-liquid material.

Impoundments means all water, sediment, slurry or other liquid or semi-liquid holding structures and depressions, either naturally formed or artificially built.

In situ processes means activities conducted on the surface or underground in connection with in-place distillation, retorting, leaching, or other chemical or physical processing of coal. The term includes, but is not limited to, in situ gasification, in situ leaching, slurry mining, solution mining, borehole mining, and fluid recovery mining.

Intermittent stream means—

(a) A stream or reach of a stream that drains a watershed of at least one square mile, or

(b) A stream or reach of a stream that is below the local water table for at least some part of the year, and obtains its flow from both surface runoff and ground water discharge.

Irreparable damage to the environment means any damage to the environment, in violation of the Act, the regulatory program, or this chapter, that cannot be corrected by actions of the applicant.

Land use means specific uses or management-related activities, rather than the vegetation or cover of the land. Land uses may be identified in combination when joint or seasonal uses occur and may include land used for support facilities that are an integral part of the use. Changes of land use from one of the following categories to another shall be considered as a change to an alternative land use which is subject to approval by the regulatory authority.

(a) *Cropland.* Land used for the production of adapted crops for harvest, alone or in rotation with grasses and legumes, that include row crops, small grain crops, hay crops, nursery crops, orchard crops, and other similar crops.

(b) *Pastureland or land occasionally cut for hay.* Land used primarily for the long-term production of adapted, domesticated forage plants to be grazed by livestock or occasionally cut and cured for livestock feed.

(c) *Grazingland.* Land used for grasslands and forest lands where the indigenous vegetation is actively managed for grazing, browsing, or occasional hay production.

(d) *Forestry.* Land used or managed for the long-term production of wood, wood fiber, or wood-derived products.

(e) *Residential.* Land used for single- and multiple-family housing, mobile home parks, or other residential lodgings.

(f) *Industrial/Commercial.* Land used for—

(1) Extraction or transformation of materials for fabrication of products, wholesaling of products, or long-term storage of products. This includes all heavy and light manufacturing facilities.

(2) Retail or trade of goods or services, including hotels, motels, stores, restaurants, and other commercial establishments.

(g) *Recreation.* Land used for public or private leisure-time activities, including developed recreation facilities such as parks, camps, and amusement areas, as well as areas for less intensive uses such as hiking, canoeing, and other undeveloped recreational uses.

(h) *Fish and wildlife habitat.* Land dedicated wholly or partially to the production, protection, or management of species of fish or wildlife.

(i) *Developed water resources.* Land used for storing water for beneficial uses, such as stockponds, irrigation, fire protection, flood control, and water supply.

(j) *Undeveloped land or no current use or land management.* Land that is undeveloped or, if previously developed, land that has been allowed to return naturally to an undeveloped state or has been allowed to return to forest through natural succession.

Materially damage the quantity or quality of water means, with respect to alluvial valley floors, to degrade or reduce by surface coal mining and reclamation operations the water quantity or quality supplied to the alluvial valley floor to the extent that resulting changes would significantly decrease the capability of the alluvial valley floor to support agricultural activities.

MSHA means the Mine Safety and Health Administration.

Moist bulk density means the weight of soil (oven dry) per unit volume. Volume is measured when the soil is at field moisture capacity (1/3 bar moisture tension). Weight is determined after drying the soil at 105° C.

Mulch means vegetation residues or other suitable materials that aid in soil stabilization and soil moisture conservation, thus providing micro-climatic conditions suitable for germination and growth.

Noxious plants means species that have been included on official State lists of noxious plants for the State in which the surface coal mining and reclamation operation occurs.

Operator means any person engaged in coal mining who removes or intends to remove more than 250 tons of coal from the earth or from coal refuse piles by mining within 12 consecutive calendar months in any one location.

Outslope means the face of the spoil or embankment sloping downward from the highest elevation to the toe.

Overburden means material of any nature, consolidated or unconsolidated, that overlies a coal deposit, excluding topsoil.

Perennial stream means a stream or part of a stream that flows continuously during all of the calendar year as a result of ground-water discharge or surface runoff. The term does not include *intermittent stream* or *ephemeral stream.*

Performance bond means a surety bond, collateral bond or self-bond or a combination thereof, by which a permittee assures faithful performance of all the requirements of the Act, this chapter, a State, Federal or Federal lands program, and the requirements of the permit and reclamation plan.

Permanent diversion means a diversion remaining after surface coal mining and reclamation operations are completed which has been approved for retention by the regulatory authority and other appropriate State and Federal agencies.

Permanent impoundment means an impoundment which is approved by the regulatory authority and, if required, by other State and Federal agencies for retention as part of the postmining land use.

Permit means a permit to conduct surface coal mining and reclamation operations issued by the State regulatory authority pursuant to a State program or by the Secretary pursuant to a Federal program. For purposes of the Federal lands program, permit means a permit issued by the State regulatory authority under a cooperative agreement or by OSM where there is no cooperative agreement.

Permit area means the area of land, indicated on the approved map submitted by the operator with his or her application, required to be covered by the operator's performance bond under Subchapter J of this chapter and which shall include the area of land upon which the operator proposes to conduct surface coal mining and reclamation operations under the permit, including all disturbed areas; provided that areas adequately bonded under another valid permit may be excluded from the permit area.

Permittee means a person holding or required by the Act or this chapter to hold a permit to conduct surface coal mining and reclamation operations issued by a State regulatory authority pursuant to a State program, by the Director pursuant to a Federal program, by the Director pursuant to a Federal lands program, or, where a cooperative agreement pursuant to section 523 of the Act has been executed, by the Director and the State regulatory authority.

Precipitation event means a quantity of water resulting from drizzle, rain, snow, sleet, or hail in a limited period of time. It may be expressed in terms of recurrence interval. As used in these regulations, *precipitation event* also includes that quantity of water emanating from snow cover as snowmelt in a limited period of time.

Previously mined area means land disturbed or affected by earlier coal mining operations that was not reclaimed in accordance with the requirements of ths chapter.

Prime farmland means those lands which are defined by the Secretary of Agriculture in 7 CFR 657 (FEDERAL REGISTER Vol. 4 No. 21) and which have historically been used for cropland as that phrase is defined above.

Principal shareholder means any person who is the record or beneficial owner of 10 percent or more of any class of voting stock.

Property to be mined means both the surface estates and mineral estates within the permit area and the area covered by underground workings.

Rangeland means land on which the natural potential (climax) plant cover is principally native grasses, forbs, and shrubs valuable for forage. This land includes natural grasslands and savannahs, such as prairies, and juniper savannahs, such as brushlands. Except for brush control, management is primarily achieved by regulating the intensity of grazing and season of use.

Reasonably available spoil means spoil and suitable coal mine waste material generated by the remining operation or other spoil or suitable coal mine waste material located in the permit area that is accessible and available for use and that when rehandled will not cause a hazard to public safety or significant damage to the environment.

Recharge capacity means the ability of the soils and underlying materials to allow precipitation and runoff to infiltrate and reach the zone of saturation.

Reclamation means those actions taken to restore mined land as required by this chapter to a postmining land use approved by the regulatory authority.

Recurrence interval means the interval of time in which a precipitation event is expected to occur once, on the average. For example, the 10-year 24-hour precipitation event would be that 24-hour precipitation event expected to occur on the average once in 10 years.

Reference area means a land unit maintained under appropriate management for the purpose of measuring vegetation ground cover, productivity and plant species diversity that are produced naturally or by crop production methods approved by the regulatory authority. Reference areas must be representative of geology, soil, slope, and vegetation in the permit area.

Refuse pile means a surface deposit of coal mine waste that does not impound water, slurry, or other liquid or semi-liquid material.

Remining means conducting surface coal mining and reclamation operations which affect previously mined areas.

Renewable resource lands means aquifers and areas for the recharge of aquifers and other underground waters, areas for agricultural or silvicultural production of food and fiber, and grazinglands.

Road means a surface right-of-way for purposes of travel by land vehicles used in coal exploration or coal mining and reclamation operations. A road consists of the entire area within the right-of-way, including the roadbed, shoulders, parking and side areas, approaches, structures, ditches and surface. The term includes access and haul roads constructed, used, reconstructed, improved, or maintained for use in coal exploration or within the affected area of surface coal mining and reclamation operations, including use by coal hauling vehicles leading to transfer, processing, or storage areas. The term does not include pioneer or construction roadways used for part of the road-construction procedure or roads within the immediate mining-pit area.

Safety factor means the ratio of the available shear strength to the developed shear stress, or the ratio of the sum of the resisting forces to the sum of the loading or driving forces, as determined by accepted engineering practices.

Sedimentation pond means an impoundment used to remove solids from water in order to meet water quality standards or effluent limitations before the water leaves the permit area.

Significant, imminent environmental harm to land, air or water resources means—

(a) An environmental harm is an adverse impact on land, air, or water resources which resources include, but are not limited to, plant and animal life.

(b) An environmental harm is imminent, if a condition, practice, or violation exists which—

(1) Is causing such harm; or,

(2) May reasonably be expected to cause such harm at any time before the end of the reasonable abatement time that would be set under section 521(a)(3) of the Act.

(c) An environmental harm is significant if that harm is appreciable and not immediately reparable.

Slope means average inclination of a surface, measured from the horizontal, generally expressed as the ratio of a unit of vertical distance to a given number of units of horizontal distance (e.g., 1v: 5h). It may also be expressed as a percent or in degrees.

Soil horizons means contrasting layers of soil parallel or nearly parallel to the land surface. Soil horizons are differentiated on the basis of field characteristics and laboratory data. The four master soil horizons are—

(a) *A horizon.* The uppermost mineral layer, often called the surface soil. It is the part of the soil in which organic matter is most abundant, and leaching of soluble or suspended particles is typically the greatest;

(b) *E horizon.* The layer commonly near the surface below an A horizon and above a B horizon. An E horizon is most commonly differentiated from an overlying A horizon by lighter color and generally has measurably less organic matter than the A horizon. An E horizon is most commonly differentiated from an underlying B horizon in the same sequum by color of higher value or lower chroma, by coarser texture, or by a combination of theses properties;

(c) *B horizon.* The layer that typically is immediately beneath the E horizon and often called the subsoil. This middle layer commonly contains more clay, iron, or aluminum than the A, E, or C horizons; and

(d) *C horizon.* The deepest layer of soil profile. It consists of loose material or weathered rock that is relatively unaffected by biologic activity.

Soil survey means a field and other investigation, resulting in a map showing the geographic distribution of different kinds of soils and an accompanying report that describes, classifies, and interprets such soils for use. Soil surveys must meet the standards of the National Cooperative Soil Survey as incorporated by reference in 30 CFR 785.17(c)(1).

Special bituminous coal mines means those mines in existence on January 1, 1972, or mines adjoining or having a common boundary with those mines for which development began after August 3, 1977, that are located in the State of Wyoming and that are being mined or will be mined according to the following criteria:

(a) Surface mining takes place on a relatively limited site for an extended period of time. The surface opening of the excavation is at least the full size of the excavation and has a continuous border.

(b) Excavation of the mine pit follows a coal seam that inclines 15° or more from the horizontal, and as the excavation proceeds downward it expands laterally to maintain stability of the pitwall or as necessary to accommodate the orderly expansion of the total mining operation.

(c) The amount of material removed from the pit is large in comparison to the surface area disturbed.

(d) There is no practicable alternative to the deep open-pit method of mining the coal.

(e) There is no practicable way to reclaim the land as required in Subchapter K.

Spoil means overburden that has been removed during surface coal mining operations.

Stabilize means to control movement of soil, spoil piles, or areas of disturbed earth by modifying the geometry of the mass, or by otherwise modifying physical or chemical properties, such as by providing a protective surface coating.

State program means a program established by a State and approved by the Secretary pursuant to section 503 of the Act to regulate surface coal mining and reclamation operations on non-Indian and non-Federal lands within that State, according to the requirements of the Act and this chapter. If a cooperative agreement under Part 745 has been entered into, a State program may apply to Federal lands, in accordance with the terms of the cooperative agreement.

Steep slope means any slope of more than 20° or such lesser slope as may be designated by the regulatory authority after consideration of soil, climate, and other characteristics of a region or State.

Subirrigation means, with respect to alluvial valley floors, the supplying of water to plants from underneath or from a semisaturated or saturated subsurface zone where water is available for use by vegetation.

Substantially disturb means, for purposes of coal exploration, to significantly impact land or water resources by blasting; by removal of vegetation, topsoil, or overburden; by construction of roads or other access routes; by placement of excavated earth or waste material on the natural land surface or by other such activities; or to remove more than 250 tons of coal.

Successor in interest means any person who succeeds to rights granted under a permit, by transfer, assignment, or sale of those rights.

Support facilities means those facilities resulting from, or incident to, an activity identified in paragraph (a) of the definition of "surface coal mining operations" in § 700.5 of this chapter and the areas upon which such facilities are located. Support facilities may consist of, but need not be limited to, the following facilities: mine buildings; bath houses; coal loading facilities; coal crushing and sizing facilities; coal storage facilities; equipment and storage facilities; fan buildings; hoist buildings; sheds, shops, and other buildings; facilities used to treat and store water for mine consumption; and railroads, surface conveyor systems, chutes, aerial tramways, or other transportation facilities, but not including roads. "Resulting from or incident to" an activity connotes an element of proximity to that activity.

Surface mining activities means those surface coal mining and reclamation operations incident to the extraction of coal from the earth by removing the materials over a coal seam, before recovering the coal, by auger coal mining, or by recovery of coal from a deposit that is not in its original geologic location.

Suspended solids or nonfilterable residue, expressed as milligrams per liter, means organic or inorganic materials carried or held in suspension in water which are retained by a standard glass fiber filter in the procedure outlined by the Environmental Protection Agency's regulations for waste water and analyses (40 CFR Part 136).

Temporary diversion means a diversion of a stream or overland flow which is used during coal exploration or surface coal mining and reclamation operations and not approved by the regulatory authority to remain after reclamation as part of the approved postmining land use.

Temporary impoundment means an impoundment used during surface coal mining and reclamation operations, but not approved by the regulatory authority to remain as part of the approved postmining land use.

Topsoil means the A and E soil horizon layers of the four master soil horizons.

Toxic-forming materials means earth materials or wastes which, if acted upon by air, water, weathering, or microbiological processes, are likely to produce chemical or physical conditions in soils or water that are detrimental to biota or uses of water.

Toxic mine drainage means water that is discharged from active or abandoned mines or other areas affected by coal exploration or surface coal mining and reclamation operations, which contains a substance that through chemical action or physical effects is likely to kill, injure, or impair biota commonly present in the area that might be exposed to it.

Transfer, assignment, or sale of permit rights means a change in ownership or other effective control over the right to conduct surface coal mining operations under a permit issued by the regulatory authority.

Underground development waste means waste-rock mixtures of coal, shale, claystone, siltstone, sandstone, limestone, or related materials that are excavated, moved, and disposed of from underground workings in connection with underground mining activities.

Underground mining activities means a combination of—

(a) Surface operations incident to underground extraction of coal or in situ processing, such as construction, use, maintenance, and reclamation of roads, above-ground repair areas, storage areas, processing areas, shipping areas, areas upon which are sited support facilities including hoist and ventilating ducts, areas utilized for the disposal and storage of waste, and areas on which materials incident to underground mining operations are placed; and

(b) Underground operations such as underground construction, operation, and reclamation of shafts, adits, underground support facilities, in situ processing, and underground mining, hauling, storage, and blasting.

Undeveloped rangeland means, for purposes of alluvial valley floors, lands where the use is not specifically controlled and managed.

Upland areas means, with respect to alluvial valley floors, those geomorphic features located outside the floodplain and terrace complex, such as isolated higher terraces, alluvial fans, pediment surfaces, landslide deposits, and surfaces covered with residuum, mud flows or debris flows, as well as highland areas underlain by bedrock and covered by residual weathered material or debris deposited by sheetwash, rillwash, or windblown material.

Valley fill means a fill structure consisting of any material, other than organic material, that is placed in a valley where side slopes of the existing valley, measured at the steepest point, are greater than 20 degrees, or where the average slope of the profile of the valley from the toe of the fill to the top of the fill is greater than 10 degrees.

Violation notice means any written notification from a governmental entity of a violation of law, whether by letter, memorandum, legal or administrative pleading, or other written communication.

Water table means the upper surface of a zone of saturation, where the body of ground water is not confined by an overlying impermeable zone.

Willful violation means an act or omission which violates the Act, this chapter, the applicable program, or any permit condition required by the Act, this chapter, or the applicable program, committed by a person who intends the result which actually occurs.

(30 U.S.C. 1201 *et seq.*)

[44 FR 15316, Mar. 13, 1979]

EDITORIAL NOTES: 1. For Federal Register citations affecting § 701.5, see the List of CFR Sections Affected in the Finding Aids section of this volume.

2. The definition of "*Adverse physical impact*" was suspended at 50 FR 258, Jan. 3, 1985.

3. The definitions of "*Agricultural activities* or *farming*", and "*Road*" (except as cross-referenced in § 942.701 of this chapter), was suspended at 50 FR 7278, Feb. 21, 1985.

4. The definition of "Support facilities" was suspended at 50 FR 28189, July 10, 1985]

§ 701.11 Applicability.

(a) Any person who conducts surface coal mining and reclamation operations on non-Indian or non-Federal lands on or after 8 months from the date of approval of a State program or implementation of a Federal program shall have a permit issued pursuant to the applicable State or Federal program. However, under conditions specified in 30 CFR 773.11(b), a person may continue operations under a previously issued permit after 8 months from the date of approval of a State program or implementation of a Federal program.

(b) Any person who conducts surface coal mining and reclamation operations on Federal lands on or after 8 months from the date of approval of a State program or implementation of a Federal program for the State in which the Federal lands are located shall have a permit issued pursuant to Part 740 of this chapter. However, under conditions specified in §740.13(a)(3) of this chapter, a person may continue such operations under a mining plan previously approved pursuant to 43 CFR Part 3480 or a permit issued by the State under the interim State program after 8 months after the date of approval of a State program or implementation of a Federal program.

(c) Any person who conducts surface coal mining and reclamation operations on Indian lands on or after eight months from the effective date of the Federal program for Indian lands shall have a permit issued pursuant to Part 750 of this chapter. However, a person who is authorized to conduct surface coal mining and reclamation operations may continue to conduct those operations beyond eight months from the effective date of the Federal program for Indian lands if the following conditions are met:

(1) An application for a permit to conduct those operations has been made to the Director within two months after the effective date of the Federal program for Indian lands and the initial administrative decision on that application has not been issued; and

(2) Those operations are conducted in compliance with all terms and conditions of the existing authorization to mine, the requirements of the Act, 25 CFR Part 216, and the requirements of all applicable mineral agreements, leases or licenses.

(d) The requirements of Subchapter K of this chapter shall be effective and shall apply to each surface coal mining and reclamation operation which is required to obtain a permit under the Act, on the earliest date upon which the Act and this chapter require a permit to be obtained, except as provided in paragraph (e) of this section.

(e)(1) Each structure used in connection with or to facilitate a coal exploration or surface coal mining and reclamation operation shall comply with the performance standards and the design requirements of Subchapter K of this chapter, except that—

(i) An existing structure which meets the performance standards of Subchapter K of this chapter but does not meet the design requirements of Subchapter K of this chapter may be exempted from meeting those design requirements by the regulatory authority. The regulatory authority may grant this exemption only as part of the permit application process after obtaining the information required by 30 CFR 780.12 or 784.12 and after making the findings required in 30 CFR 773.15;

(ii) If the performance standard of Subchapter B of this chapter is at least as stringent as the comparable performance standard of Subchapter K of this chapter, an existing structure which meets the performance standards of Subchapter B of this chapter may be exempted by the regulatory authority from meeting the design requirements of Subchapter K of this chapter. The regulatory authority may grant this exemption only as part of the permit application process after obtaining the information required by 30 CFR 780.12 or 784.12 and after making the findings required in 30 CFR 773.15;

(iii) An existing structure which meets a performance standard of Subchapter B of this chapter which is less stringent than the comparable performance standards of Subchapter K of this chapter or which does not meet a performance standard of Subchapter K of this chapter, for which there was no equivalent performance standards in Subchapter B of this chapter, shall be modified or reconstructed to meet the performance and design standard of Subchapter K of this chapter pursuant to a compliance plan approved by the regulatory authority only as part of the permit application as required in 30 CFR 780.12 or 784.12 and according to the findings required by 30 CFR 773.15;

(iv) An existing structure which does not meet the performance standards of Subchapter B of this chapter and which the applicant proposes to use in connection with or to facilitate the coal exploration or surface coal mining and reclamation operation shall be modified or reconstructed to meet the performance and design standards of Subchapter K prior to issuance of the permit.

(2) The exemptions provided in paragraphs (e)(1)(i) and (e)(1)(ii) of this section shall not apply to—

(i) The requirements for existing and new coal mine waste disposal facilities; and

(ii) The requirements to restore the approximate original contour of the land.

(f)(1) Any person conducting coal exploration on non-Federal and non-Indian lands on or after the date on which a State program is approved or a Federal program implemented, shall either file a notice of intention to explore or obtain approval of the regulatory authority, as required by 30 CFR Part 772.

(2) Coal exploration performance standards in 30 CFR Part 815 shall apply to coal exploration on non-Federal and non-Indian lands which substantially disturbs the natural land surface 2 months after approval of a State program or implementation of a Federal program.

(Pub. L. 95-87, 30 U.S.C. 1201 *et seq.*)

[44 FR 15316, Mar. 13, 1979, as amended at 44 FR 77446, Dec. 31, 1979; 48 FR 6935, Feb. 16, 1983; 48 FR 44391, Sept. 28, 1983; 48 FR 44779, Sept. 30, 1983; 49 FR 38477, Sept. 28, 1984]

EDITORIAL NOTE: A document published at 44 FR 67942, Nov. 27, 1979, temporarily suspended § 701.11(d)(1) and (2), which were redesignated as paragraphs (e) (1) and (2) at 49 FR 38477, Sept. 28, 1984, insofar as it may be read to retain discretion in the regulatory authority to grant an exemption from reconstruction of existing structures after making the findings in 30 CFR 773.15.

PART 705—RESTRICTION ON FINANCIAL INTERESTS OF STATE EMPLOYEES

Sec.
705.1 Purpose.
705.2 Objectives.
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705.19 Resolving prohibited interests.
705.21 Appeals procedures.

AUTHORITY: Surface Mining Control and Reclamation Act of 1977, Pub. L. 95-87, secs. 201(c) and 517(g).

SOURCE: 42 FR 56060, Oct. 20, 1977, unless otherwise noted.

§ 705.1 Purpose.

This part sets forth the minimum policies and procedures that States must establish and use to implement section 517(g) of the Act in order to eligible for reimbursement of costs of enforcing and administering the initial regulatory program under section 502, or for grants for developing, administering and énforcing a State regulatory program under section 705 of the Act, or to assume primary regulatory authority under section 503 of the Act (Pub. L. 95-87). Compliance with the policies and procedures in this part will satisfy the requirements of section 517(g) of the Act. Section 517(g) prohibits certain employees of the State Regulatory Authority from having any direct or indirect financial interest in any underground or surface coal mining operation. The regulations in this part are applicable to employees of the State Regulatory Authority as defined in § 705.5.

§ 705.2 Objectives.

The objectives of this part are:

(a) To ensure that the States adopt a standard program for implementing the provisions in section 517(g) of the Act.

(b) To establish methods which will ensure, as required by section 517(g) of the Act, that each employee of the State Regulatory Authority who performs any function or duty under the Act does not have a direct or indirect financial interest in any underground or surface coal mining operation.

(c) To establish the methods by which the monitoring, enforcing and reporting responsibilities of the Secretary of the Interior as stated in section 517(g) will be accomplished.

§ 705.3 Authority.

(a) The Secretary of the Interior is authorized by Pub. L. 95-87 to:

(1) Establish the methods by which he or she and State officials will monitor and enforce the provisions contained in section 517(g) of the Act;

(2) Establish appropriate provisions for employees of the State Regulatory Authority who perform any function or duty under the Act to file a statement and supplements thereto in order to identify any financial interest which may be affected by section 517(g), and

(3) Report annually to the Congress the actions taken and not taken during the preceding calendar year under section 517(g) of the Act.

(b) The Governor of the State, the Head of the State Regulatory Authority, or such other State official designated by State law, is authorized to expand the provisions in this part in order to meet the particular needs within the State.

(c) The Office of Audit and Investigation, U.S. Department of the Interior, is authorized to conduct on behalf of the Secretary periodic audits related to the provisions contained in section 517(g) of the Act and related to the provisions in this part. These audits will be conducted on a cyclical basis or upon request of the Secretary or the Director.

§ 705.4 Responsibility.

(a) The Head of each State Regulatory Authority shall;

(1) Provide advice, assistance, and guidance to all State employees required to file statements pursuant to § 705.11;

(2) Promptly review the statement of employment and financial interests and supplements, if any, filed by each employee, to determine if the employee has correctly identified those listed employment and financial interests which constitute a direct or indirect financial interest in an underground or surface coal mining operation;

(3) Resolve prohibited financial interest situations by ordering or initiating remedial action or by reporting the violations to the Director who is responsible for initiating action to impose the penalties of the Act;

(4) Certify on each statement that review has been made, that prohibited financial interests, if any, have been resolved, and that no other prohibited interests have been identified from the statement;

(5) Submit to the Director such Statistics and information as he or she may request to enable preparation of the required annual report to Congress;

(6) Submit to the Director the initial listing and the subsequent annual listings of positions as required by § 705.11 (b), (c), and (d);

(7) Furnish a blank statement 45 days in advance of the filing date established by § 705.13(a) to each State employee required to file a statement; and

(8) Inform annually each State employee required to file a statement with the Head of the State Regulatory Authority, or such other official designated by State law or regulation, of the name, address, and telephone number of the person whom they may contact for advice and counseling.

(b) The Director, Office of Surface Mining Reclamation and Enforcement, shall:

(1) Provide advice, assistance, and counseling to the Heads of all State Regulatory Authorities concerning implementation of these regulations;

(2) Promptly review the statement of employment and financial interests and supplements, if any, filed by each Head of the State Regulatory Authority. The Director will review the statement to determine if the Head of the State Regulatory Authority has correctly identified those listed employment and financial interests which constitute a direct or indirect financial interest in an underground or surface coal mining operation;

(3) Recommend to the State Attorney General, or such other State official designated by State law or the Governor of the State, the remedial action to be ordered or initiated, recommend to the Secretary that action be taken to impose the penalties of the Act, or recommend to the Secretary that other appropriate action be taken with respect to reimbursements, grants, or State programs;

(4) Certify on each statement filed by the Head of the State Regulatory Authority that the State has completed the review of the statement, that prohibited financial interests have been resolved, and that no other prohibited interests have been identified from the statement;

(5) Monitor the program by using reports requested from Heads of State Regulatory Authorities and by using periodic audits performed by the Office of Audit and Investigation, U.S. Department of the Interior;

(6) Prepare for the Secretary of the Interior a consolidated report to the Congress as part of the annual report submitted under section 706 of the Act, on the actions taken and not taken during the preceding calendar year under section 517(g);

(7) Designate if so desired other qualified Office of Surface Mining Reclamation and Enforcement employees as assistant counselors to assist with the operational duties associated with filing and reviewing the statements from the Heads of each State Regulatory Authority;

(8) Furnish a blank statement by December 15 of each year, to the Head of each State Regulatory Authority; and

(9) Inform annually, the head of each State Regulatory Authority of the requirement to file his or her statement with the Director and supply the name, address, and telephone number of the person whom they may contact for advice and counseling.

(c) State Regulatory Authority employees performing any duties or functions under the Act shall:

(1) Have no direct or indirect financial interest in coal mining operations;

(2) File a fully completed statement of employment and financial interest 120 days after these regulations become effective or upon entrance to duty, and annually thereafter on the specified filing date; and

(3) Comply with directives issued by persons responsible for approving each statement and comply with directives issued by those persons responsible for ordering remedial action.

§ 705.5 Definitions.

Act. Means the Surface Mining Control and Reclamation Act of 1977, Pub. L. 95-87.

Coal mining operation. Means the business of developing, producing, preparing or loading bituminous coal, subbituminous coal, anthracite, or lignite, or of reclaiming the areas upon which such activities occur.

Employee. Means (a) any person employed by the State Regulatory Authority who performs any function or duty under the Act, and (b) advisory board or commission members and consultants who perform any function or duty under the Act, if they perform decisionmaking functions for the State Regulatory Authority under the authority of State law or regulations. However, members of advisory boards or commissions established in accordance with State law or regulations to represent multiple interests are not considered to be employees. State officials may through State law or regulations expand this definition to meet their program needs.

Performing any function or duty under this Act. Means those decisions or actions, which if performed or not performed by an employee, affect the programs under the Act.

Direct financial interest. Means ownership or part ownership by an employee of lands, stocks, bonds, debentures, warrants, partnership shares, or other holdings and also means any other arrangement where the employee may benefit from his or her holding in or salary from coal mining operations. Direct financial interests include employment, pensions, creditor, real property and other financial relationships.

Indirect financial interest. Means the same financial relationships as for direct ownership, but where the employee reaps the benefits of such interests, including interests held by his or her spouse, minor child and other relatives, including in-laws, residing in the employee's home. The employee will not be deemed to have an indirect financial interest if there is no relationship between the employee's functions or duties and the coal mining operation in which the spouse, minor children or other resident relatives hold a financial interest.

Prohibited financial interest. Means any direct or indirect financial interest in any coal mining operation.

Office. Means the Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior.

Director. Means the Director or Acting Director of the Office of Surface Mining Reclamation and Enforcement within the U.S. Department of the Interior.

Secretary. Means the Secretary of the Interior.

State Regulatory Authority. Means that office in each State which has primary responsibility at the State level for administering this Act. Until an office is established under the provisions of section 503 or section 504 of the Act, this term shall refer to those existing State offices having primary jurisdiction for regulating, enforcing, and inspecting any surface coal mining and reclamation operations within the State during the interim period between the effective date of the Act and the establishment of the State Regulatory Authority under section 503 or section 504.

§ 705.6 Penalties.

(a) Criminal penalties are imposed by section 517(g) of the Surface Mining Control and Reclamation Act of 1977, Pub. L. 95-87. Section 517(g) prohibits each employee of the State Regulatory Authority who performs any function or duty under the Act from having a direct or indirect financial interest in any underground or surface coal mining operation. The Act provides that whoever knowingly violates the provisions of section 517(g) shall, upon conviction, be punished by a fine of not more than $2,500, or by imprisonment of not more than one year, or by both.

(b) Regulatory penalties are imposed by this part. The provisions in section 517(g) of the Act make compliance with the financial interest requirements a condition of employment for employees of the State Regulatory Authority who perform any functions or duties under the Act. Accordingly, an employee who fails to file the required statement will be considered in violation of the intended employment provisions of section 517(g) and will be subject to removal from his or her position.

§ 705.10 Information collection.

The information collection requirement contained in 30 CFR 705.11 has been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned clearance number 1029-0067. The information is being collected on Form OSM 23 to meet the requirement of Section 507(g) of Pub. L. 95-87, which provides that no employee of the State regulatory authority shall have a direct or indirect financial interest in any underground or surface coal mining operation. This information will be used by officials of the State regulatory agency to determine whether each State employee complies with the financial interest provisions of Pub. L. 95-87. The obligation to respond is mandatory.

(30 U.S.C. 1201 *et seq.*)

[47 FR 33684, Aug. 4, 1982]

§ 705.11 Who shall file.

(a) Any employee who performs any function or duty under the Act is required to file a statement of employment and financial interests. An employee who occupies a position which has been determined by the Head of the State Regulatory Authority not to involve performance of any function or duty under the Act or who is no longer employed by the State Regulatory Authority at the time a filing is due, is not required to file a statement.

(b) The Head of each State Regulatory Authority shall prepare a list of those positions within the State Regulatory Authority that do not involve performance of any functions or duties under the Act. State Regulatory Authorities may be organized to include more activities than are covered by the Act. For example, if a State has identified its Department of Natural Resources as the State Regulatory Authority there may be only one or two offices within that Department which have employees who perform any functions, or duties under the Act. In those cases, the Head of the State Regulatory Authority shall list the title of boards, offices, bureaus or divisions within the State Regulatory Authority which do not perform any functions or duties under the Act and list the positions not performing functions or duties under the Act for only those boards, offices, bureaus or divisions that do have some employees performing functions or duties under the Act. Only those employees who are employed in a listed organizational unit or who occupy a listed position will be exempted from the filing requirements of section 517(g) of the Act.

(c) The Head of each State Regulatory Authority shall prepare and submit to the director, an initial listing of positions that do not involve performance of any functions or duties under the Act within 60 days of the effective date of these regulations.

(d) The Head of each State Regulatory Authority shall annually review and update this listing. For monitoring and reporting reasons, the listing must be submitted to the Director and must contain a written justification for inclusion of the positions listed. Proposed revisions or a certification that revision is not required shall be submitted to the Director by no later than September 30 of each year. The Head of each State Regulatory Authority may revise the listing by the addition or deletion of positions at any time he or she determines such revisions are required to carry out the purpose of the law or the regulations of this part. Additions to and deletions from the listing of positions are effective upon notification to the incumbents of the positions added or deleted.

(e) The Secretary or the Director may modify the listing at any time one or both of them determines that the listing submitted by the Head of a State Regulatory Authority indicates that coverage is not sufficient to carry out the purpose of the law or the regulations of this part.

§ 705.13 When to file.

(a) Employees performing functions or duties under the Act shall file:

(1) Within 120 days of the effective date of these regulations; and

(2) Annually on February 1 of each year, or at such other date as may be agreed to by the Director, provided that such alternative date will allow sufficient time to obtain information needed by the Director for his or her annual report to the Congress.

(b) New employees hired, appointed, or transferred to perform functions or duties under the Act will be required to file at the time of entrance to duty.

(c) New employees are not required to file an annual statement on the subsequent annual filing date if this date occurs within two months after their initial statement was filed. For example, an employee entering duty on December 1, 1978 would file a statement on that date. Because December 1 is within two months of February 1 the employee would not be required to file his or her next annual statement until February 1, 1980.

§ 705.15 Where to file.

The head of the State Regulatory Authority shall file his or her statement with the Director. All other employees, as provided in § 705.11, shall file their statement with the head of the State Regulatory Authority or such other official as may be designated by State law or regulation.

§ 705.17 What to report.

(a) Each employee shall report all information required on the statement of employment and financial interests of the employee, his or her spouse, minor children, or other relatives who are fulltime residents of the employee's home. The report shall be on OSM Form 705-1 as provided by the Office. The statement consists of three major parts, (1) a listing of all financial interests, including employment, security, real property, creditor and other financial interests held during the course of the preceding year, (2) a certification that none of the listed financial interests represent a direct or indirect financial interest in an underground or surface coal mining operation except as specifically identified and described by the employee as part of the certificate and (3) a certification by the reviewer that the form was reviewed, that prohibited interests have been resolved, and that no other prohibited interests have been identified from the statement.

(b) Listing of all financial interests. The statement will set forth the following information regarding any financial interest:

(1) *Employment.* Any continuing financial interests in business entities and nonprofit organizations through a pension or retirement plan, shared income, salary or other income arrangement as a result of prior or current employment. The employee, his or her spouse or other resident relative is not required to report a retirement plan from which he or she will receive a guaranteed income. A guaranteed income is one which is unlikely to be changed as a result of actions taken by the State Regulatory Authority.

(2) *Securities.* Any financial interest in business entities and nonprofit organizations through ownership of stock, stock options, bonds, securities or other arrangements including trusts. An employee is not required to report mutual funds, investment clubs or regulated investment companies not specializing in underground and surface coal mining operations.

(3) *Real Property.* Ownership, lease, royalty or other interests or rights in lands or minerals. Employees are not required to report lands developed and occupied for a personal residence.

(4) *Creditors.* Debts owed to business entities and nonprofit organizations. Employees are not required to report debts owed to financial institutions (banks, savings and loan associations, credit unions, and the like) which are chartered to provide commercial or personal credit. Also excluded are charge accounts and similar short term debts for current and ordinary household and living expenses.

(c) Employee certification, and, if applicable, a listing of exceptions.

(1) The statement will provide for a signed certification by the employee that to the best of his or her knowledge, (i) none of the listed financial interests represent an interest in an underground or surface coal mining operation except as specifically identified and described as exceptions by the employee as part of the certificate, and (ii) the information shown on the statement is true, correct, and complete.

(2) An employee is expected to (i) have complete knowledge of his or her personal involvement in business enterprises such as a sole proprietorship and partnership, his or her outside employment and the outside employment of the spouse and other covered relatives, and (ii) be aware of the information contained in the annual financial statement or other corporate or business reports routinely circulated to investors or routinely made available to the public.

(3) The exceptions shown in the employee certification of the form must provide enough information for the Head of the State Regulatory Authority to determine the existence of a direct or indirect financial interest. Accordingly, the exceptions should:

(i) List the financial interests;

(ii) Show the number of shares, estimated value or annual income of the financial interests; and

(iii) Include any other information which the employee believes should be considered in determining whether or not the interest represents a prohibited interest.

(4) Employees are cautioned to give serious consideration to their direct and indirect financial interests before signing the statement of certification. Signing the certification without listing known prohibited financial interests may be cause for imposing the penalties prescribed in § 705.6(a).

§ 705.18 Gifts and gratuities.

(a) Except as provided in paragraph (b) of this section, employees shall not solicit or accept, directly or indirectly, any gift, gratuity, favor, entertainment, loan or any other thing of monetary value, from a coal company which:

(1) Conducts or is seeking to conduct, operations or activities that are regulated by the State Regulatory Authority; or

(2) Has interests that may be substantially affected by the performance or non-performance of the employee's official duty.

(b) The prohibitions in paragraph (a) of this section do not apply in the context of obvious family or personal relationships, such as those between the parents, children, or spouse of the employee and the employee, when the circumstances make it clear that it is those relationships rather than the business of the persons concerned which are the motivating factors. An employee may accept:

(1) Food and refreshments of nominal value on infrequent occasions in the ordinary course of a luncheon, dinner, or other meeting where an employee may properly be in attendance; and

(2) Unsolicited advertising or promotional material, such as pens, pencils, note pads, calendars and other items of nominal value.

(c) Employees found guilty of violating the provisions of this section will be subject to administrative remedies in accordance with existing or adopted State regulations or policies.

§ 705.19 Resolving prohibited interests.

(a) Actions to be taken by the Head of the State Regulatory Authority:

(1) Remedial action to effect resolution. If an employee has a prohibited financial interest, the Head of the State Regulatory Authority shall promptly advise the employee that remedial action which will resolve the prohibited interest is required within 90 days.

(2) Remedial action may include:

(i) Reassignment of the employee to a position which performs no function or duty under the Act, or

(ii) Divestiture of the prohibited financial interest, or

(iii) Other appropriate action which either eliminates the prohibited interest or eliminates the situation which creates the conflict.

(3) Reports of noncompliance. If 90 days after an employee is notified to take remedial action that employee is not in compliance with the requirements of the Act and these regulations, the Head of the State Regulatory Authority shall report the facts of the situation to the Director who shall determine whether action to impose the penalties prescribed by the Act should be initiated. The report to the Director shall include the original or a certified true copy of the employee's statement and any other information pertinent to the Director's determination, including a statement of actions being taken at the time the report is made.

(b) Actions to be taken by the Director:

(1) Remedial action to effect resolution. Violations of the regulations in this part of the Head of a State Regulatory Authority, will be cause for remedial action by the Governor of the State or other appropriate State official based on recommendations from the Director on behalf of the Secretary. The Governor or other appropriate State official shall promptly advise the Head of the State Regulatory Authority that remedial action which will resolve the prohibited interest is required within 90 days.

(2) Remedial action should be consistent with the procedures prescribed for other State employees by § 705.19(a)(2).

(3) Reports on noncompliance.

(i) If 90 days after the Head of State Regulatory Authority is notified to take remedial action the Governor or other appropriate State official notifies the Director that the Head of the State Regulatory Authority is not in compliance with the Act and these regulations, the Director shall report the facts of the situation to the Secretary who shall determine whether the action to impose the penalties prescribed by the Act, or to impose the eligibility restrictions prescribed by § 705.1 should be initiated.

(ii) Within 30 days of receipt of a noncompliance report from the Head of a Regulatory Authority under § 705.19(a)(3), the Director shall notify the Head of the State Regulatory Authority and the employee involved of additional action to be taken. Actions which the Director may take include but are not limited to the granting of additional time for resolution or the initiation of action to impose the penalties prescribed by the Act.

§ 705.21 Appeals procedures.

Employees have the right to appeal an order for remedial action under § 705.19, and shall have 30 days to exercise this right before disciplinary action is initiated.

(a) Employees other than the Head of the State Regulatory Authority, may file their appeal, in writing, through established procedures within their particular State.

(b) The Head of the State Regulatory Authority may file his or her appeal, in writing, with the Director who will refer it to the Conflict of Interest Appeals Board within the U.S. Department of the Interior.

PART 706—RESTRICTION ON FINANCIAL INTERESTS OF FEDERAL EMPLOYEES

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706.21 Appeals procedures.

AUTHORITY: Surface Mining Control and Reclamation Act of 1977, Pub. L. 95-87, sec. 201 (c) and (f).

SOURCE: 42 FR 56060, Oct. 20, 1977, unless otherwise noted.

§ 706.1 Purpose.

This part sets forth the minimum policies and procedures to be followed by Federal employees to satisfy the requirements of section 201(f) of the Act. The requirements of this part are in addition to Executive Order 11222 of May 8, 1965, and other applicable regulations related to conflict of interest. Section 201(f) prohibits certain Federal employees from having any direct or indirect financial interest in underground or surface coal mining operations. The regulations of this part are applicable to Federal employees as defined in § 706.3.

§ 706.2 Objectives.

The objectives of this part are:

(a) To ensure that affected Federal agencies adopt a standard program for implementing the provisions in section 201(f) of the Act.

(b) To establish methods which will ensure, as required by section 201(f) of the Act, that each Federal employee who performs any function or duty under the Act does not have a direct or indirect financial interest in an underground or surface coal mining operation.

(c) To establish the methods by which the monitoring, enforcing and reporting responsibilities of the Director and the Secretary of the Interior under section 201(f) will be accomplished.

§ 706.3 Definitions.

Act. Means the Surface Mining Control and Reclamation Act of 1977, Pub. L. 95-87.

Coal mining operation. Means the business of developing, producing, preparing or loading bituminous coal, subbituminous coal, anthracite or lignite or of reclaiming the areas upon which such activities occur.

Employee. Means any person employed by the Office of Surface Mining Reclamation and Enforcement within the U.S. Department of the Interior and any other person employed by the Federal Government who performs functions or duties under the Act without regard to the duration or nature of his or her appointment.

Performing any function or duty under this act. Means those decisions or actions, which if performed or not performed by an employee, affect the programs under the Act.

Direct financial interest. Means ownership or part ownership by an employee of lands, stocks, bonds, debentures, warrants, partnership shares, or other holdings and also means any other arrangement where the employee may benefit from his or her holding in or salary from coal mining operations. Direct financial interests include employment, pensions, creditor, real property and other financial relationships.

Indirect financial interest. Means the same financial relationships as for direct ownership, but where the employee reaps the benefits of such interests, including interests held by his or her spouse, minor child and other relatives, including inlaws, residing in the employee's home. The employee will not be deemed to have an indirect financial interest if there is no relationship between the employee's functions or duties and the coal mining operation in which the spouse, minor children or other resident relatives hold a financial interest.

Prohibited financial interest. Means any direct or indirect financial interest in any coal mining operation.

Office. Means the Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior.

Director. Means the Director or Acting Director of the Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior.

Secretary. Means the Secretary of the Interior.

Other Federal agency. Means any executive Federal agency or office or part thereof not a part of the U.S. Department of the Interior, and includes but is not limited to, the following agencies: The Department of Agriculture, the Department of Justice, the Corps of Engineers, the Environmental Protection Agency, the Council on Environmental Quality and the Energy Research and Development Administration.

§ 706.4 Authority.

(a) The Director is authorized by Pub. L. 95-87 to:

(1) Establish the methods by which the provisions in section 201(f) of the Act will be monitored and enforced;

(2) Establish appropriate provisions for all employees who perform any function or duty under the Act to file a statement and supplements thereto concerning their financial interests which may be affected by section 201(f); and

(3) Report annually to the Congress on the actions taken and not taken during the preceding calendar year under section 201(f) of the Act.

(b) Other Federal agencies with employees who perform functions or duties under the Act may adopt financial interest regulations pursuant to the Act which are consistent with the requirements in this part. If any such agency does not adopt regulations pursuant to this part, that agency shall enter into a memorandum of understanding with the Director, to have the employees of that agency who perform functions or duties under the Act file their statements with the Director. The Director will review statements filed with him or her, applying the regulations of the Department of the Interior. Where the Director determines that remedial action is necessary, he or she will refer the case to the employing agency with a recommendation as to the action to be taken.

(c) The Office of Audit and Investigation within the U.S. Department of the Interior, will conduct periodic audits of Interior's compliance with the provisions contained in section 201(f) of the Act and the provisions of this part. The Office of Audit and Investigation will arrange for such periodic audits of other Federal agencies to be performed by the audit unit of each such agency. The audits will be conducted on a cyclical basis or upon request of the Secretary of the Interior or the Director. Copies of all audit reports and related responses on corrective actions will be provided to the Director.

§ 706.5 Responsibility.

(a) The Director, the Head of each other Federal agency, and the Head of each other bureau or office within the U.S. Department of the Interior, have the following common responsibilities concerning employees within their organizations performing any functions or duties under the Act, and shall:

(1) Provide advice, assistance and counseling to employees concerning financial interest matters related to the Act;

(2) Promptly review the statement of employment and financial interests and supplements, if any, filed by each employee to determine if the employee has correctly identified those listed employment and financial interests which constitute a direct or indirect financial interest in an underground or surface coal mining operation;

(3) Certify on each statement that review has been made, that prohibited financial interests if any, have been resolved, and that no other prohibited interests have been identified from the statement;

(4) Resolve prohibited financial interest situations by promptly notifying and ordering the employee to take remedial action within 90 days, or by initiating action to impose the penalties of the Act;

(5) Furnish a blank statement by December 15 of each year to each employee required to file a statement within his or her employing organization; and

(6) Inform annually each employee required to file a statement within his or her employing organization of the name, address, and telephone number of the person whom they may contact for advice and counseling.

(b) In addition to the common responsibilities in paragraph (a) of this section the Director shall:

(1) Monitor the program by using reports requested from the Heads of other Federal agencies, from the Heads of other bureaus and offices within the U.S. Department of the Interior, and by using periodic audits performed by the Office of Audit and Investigation, U.S. Department of the Interior and by other Federal agencies;

(2) Prepare for the Secretary a consolidated report to the Congress as part of the annual report submitted under section 706 of the Act, on the actions taken and not taken during the preceding calendar year under section 201(f);

(3) Refer recommendations to officials of other Federal agencies concerning those cases requiring remedial action for employees of the other Federal agency who filed with the Director because that other Federal agency did not choose to adopt its own financial interest regulations pursuant to the Act.

(4) Report to the Solicitor, U.S. Department of the Interior, through the Office of Audit and Investigation, U.S. Department of the Interior, cases of knowing violations of the provisions in section 201(f). The Solicitor will transfer such reports to the U.S. Department of Justice.

(5) Designate, if so desired, other qualified Office employees as assistant counselors to assist with the operational duties associated with filing and reviewing financial statements;

(6) Furnish an adequate supply of blank statements to the Heads of those other Federal agencies which decide to have their employees file with the Director; and

(7) Submit to the Department of the Interior Ethics Counselor such statistics and information he may request in accordance with 43 CFR 20.735-17 as adopted.

(c) In addition to the common responsibilities in paragraph (a) of this section, the Head of each other Federal agency with employees performing any functions or duties under the Act shall:

(1) Decide whether to adopt independent procedures for the filing and review of financial statements or to enter into a memorandum of understanding with the Director that the U.S. Department of the Interior will provide and review the financial statements and recommend any necessary remedial action to the Head of the employing agency;

(2) Submit to the Director such statistics and information the Director

may request to enable preparation of the required annual report to the Congress, and to ensure uniform application of the provision in section 201(f) of the Act; and

(3) Report to the Director and the U.S. Department of Justice cases of knowing violations of the provisions in section 201(f).

(d) In addition to the common responsibilities in paragraph (a), the Heads of other bureaus or offices within the U.S. Department of the Interior with employees performing any functions or duties under the Act shall:

(1) Submit to the Director such statistics and information the Director may request to enable preparation of the required annual report to Congress, and to ensure uniform application of provisions in section 201(f) of the Act;

(2) Submit to the Department of the Interior Ethics Counselor such statistics and information he may request in accordance with 43 CFR 20.735-17 as adopted, and

(3) Report to the Director cases of knowing violations of the provisions in section 201(f).

(e) Employees shall:

(1) Have no direct or indirect financial interests in coal mining operations;

(2) File a fully completed statement of employment and financial interests 120 days after these regulations become effective or upon entrance to duty, and annually thereafter on the specified filing date, and

(3) Comply with directives issued by persons responsible for approving each statement and comply with directives issued by those persons responsible for ordering remedial action.

§ 706.6 Penalties.

(a) Criminal penalties are imposed by section 201(f) of the Surface Mining Control and Reclamation Act of 1977, Pub. L. 95-87, which prohibits each employee of the Office or any other Federal employee who performs any function or duty under the Act from having a direct or indirect financial interest in underground or surface coal mining operations. The Act provides that whoever knowingly violates the provisions of section 201(f) shall, upon conviction, be punished by a fine of not more than $2,500, or by imprisonment for not more than one year, or both.

(b) Regulatory penalties are imposed by this part. The provisions in section 201(f) of the Act make compliance with the financial interest requirements a condition of employment for all Office employees and for other Federal employees who perform any functions or duties under the Act. Accordingly, an employee who fails to file the required financial statement will be considered in violation of the intended employment provisions of section 201(f) and will be subject to removal from his or her position.

§ 706.11 Who shall file.

(a) Every employee in the Office is required to file a statement of employment and financial interests.

(b) Any other Federal employee who performs any function or duty under the Act is required to file a statement of employment and financial interests. The Head of each other Federal agency and the Heads of other bureaus and offices within the U.S. Department of the Interior shall prepare and submit a report within 60 days of the effective date of these regulations, either listing the Federal positions identified as performing functions or duties under the Act, or listing the organizational unit and showing the total number of employees within the unit who must file a statement. Revision to the listing or certification that revision is not required shall be submitted to the Director by no later than September 30 of each year. The Secretary, the Director, or the Heads of the other affected Federal organizations may revise the list by the addition or deletion of positions at any time such revisions are required to carry out the purpose of the law or regulations of this part. Additions to or deletions from the list of positions are effective upon notification to the incumbents.

§ 706.13 When to file.

(a) Employees performing functions or duties under the Act will be required to file:

(1) Within 120 days of the effective date of these regulations, and

(2) Annually on February 1 of each year or at such other date as may be agreed to by the Director, provided that such alternative date will allow sufficient time to obtain information needed by the Director for his or her annual report to the Congress.

(b) New employees hired, appointed, or transferred to perform functions or duties under the Act will be required to file at the time of entrance to duty.

(c) New employees are not required to file an annual statement on the subsequent annual filing date if this date occurs within two months after their initial statement was filed. For example, an employee entering duty on December 1, 1978 would file a statement on that date. Because December 1 is within two months of February 1 the employee would not be required to file his or her next annual statement until February 1, 1980.

§ 706.15 Where to file.

(a) Each Office employee shall file his or her statement of employment and financial interests with the Director.

(b) Each Department of the Interior employee, who is not an Office employee but does perform any function or duty under the Act, shall file a statement of employment and financial interests with his or her appropriate Ethics Counselor as identified in 43 CFR 20.735-22(c).

(c) Each employee of another Federal agency who performs a function or duty under the Act shall file a statement of employment and financial interests with the official designated by the Head of the other Federal agency.

§ 706.17 What to report.

(a) Each employee shall report all information required on the statement of employment and financial interests of the employee, his or her spouse, minor children, or other relatives who are fulltime residents of the employee's home. The report shall be on a form provided by the Office or on a similar form adopted by another Federal agency. The statement shall consist of three major parts, (1) a listing of all financial interests, including employment, security, real property, creditor and other financial interests held during the course of the preceding year, (2) a certification that none of the listed financial interests represent a direct or indirect financial interest in an underground or surface coal mining operation except as specifically identified and described by the employee as part of the certificate, and (3) a certification by the reviewer that the form was reviewed, that prohibited interests have been resolved, and that no other prohibited interests have been identified from the statement.

(b) Listing of all financial interests. The statement will set forth the following information regarding any financial interest:

(1) *Employment.* Any continuing financial interests in business entities and nonprofit organizations through a pension or retirement plan, shared income, salary or other income arrangement as a result of prior or current employment. The employee, his or her spouse or other resident relative is not required to report a statement plan from which he or she will receive a guaranteed income. A guaranteed income is one which is unlikely to be changed as a result of actions taken by the Federal Government under the Act.

(2) *Securities.* Any financial interest in business entities and nonprofit organizations through ownership of stock, stock options, bonds, securities or other arrangements including trusts. An employee is not required to report holdings in widely diversified mutual funds, investment clubs or regulated investment companies not specializing in underground and surface coal mining operations.

(3) *Real property.* Ownership, lease, royalty or other interests or rights in lands or minerals. Employees are not required to report lands developed and occupied for a personal residence.

(4) *Creditors.* Debts owed to business entities and nonprofit organizations. Employees are not required to report debts owed to financial institutions

(banks, savings and loan associations, credit unions, and the like) which are chartered to provide commercial or personal credit. Also excluded are charge accounts and similar short term debts for current and ordinary household and living expenses.

(c) Employee certification, and if applicable, a listing of exceptions.

(1) The statement will provide for a signed certification by the employee that to the best of his or her knowledge, (i) none of the listed financial interests represent an interest in an underground or surface coal mining operation except as specifically identified and described as exceptions by the employee as part of the certificate, and (ii) the information shown on the statement is true, correct, and complete.

(2) An employee is expected to (i) have complete knowledge of his or her personal involvement in business enterprises such as a sole proprietorship and partnership, his or her outside employment and the outside employment of the spouse and other covered relatives, and (ii) be aware of the information contained in the annual financial statements or other corporate or business reports routinely circulated to investors or routinely made available to the public.

(3) The exceptions shown in the employee certification of the form must provide enough information for the Director, the Head of another Federal agency, or the Head of other bureaus or offices within the U.S. Department of the Interior to determine the existence of a direct or indirect financial interest. Accordingly, the exceptions should:

(i) List the financial interests;

(ii) Show the number of shares, estimated value or annual income of the financial interests; and

(iii) Include any other information which the employee believes should be considered in determining whether or not the interest represents a prohibited interest.

(4) Employees are cautioned to give serious consideration to their direct and indirect financial interests before signing the statement of certification. Signing the certification without listing known prohibited financial interests may be cause for imposing the penalties prescribed in § 706.6(a).

§ 706.18 Gifts and gratuities.

(a) Except as provided in paragraph (b) of this section, employees shall not solicit or accept, directly or indirectly, any gift, gratuity, favor, entertainment, loan, or any other thing of monetary value, from a coal company which:

(1) Conducts or is seeking to conduct operations or activities that are regulated by the Federal Government; or

(2) Has interests that may be substantially affected by the performance or nonperformance of the employee's official duty.

(b) The prohibitions in paragraph (a) of this section do not apply in the context of obvious family or personal relationships, such as those between the parents, children, or spouse of the employee and the employee, when the circumstances make it clear that it is those relationships rather than the business of the persons concerned which are the motivating factors. An employee may accept:

(1) Food and refreshments of nominal value on infrequent occasions in the ordinary course of a luncheon, dinner, or other meeting where an employee may properly be in attendance, and

(2) Unsolicited advertising or promotional material, such as pens, pencils, note pads, calendars and other items of nominal value.

(c) Employees found guilty of violating the provisions of this section will be subject to administrative remedies in accordance with existing Federal regulations or policies.

§ 706.19 Resolving prohibited interests.

Actions to be taken by the Director, the heads of other Federal agencies, and the heads of other affected bureaus and offices within the U.S. Department of the Interior include:

(a) Remedial action to effect resolution. If an employee has a prohibited financial interest, the head of the organizational entity (Department, bureau, office, etc.) where the employee works shall promptly advise the employee that remedial action which will resolve the prohibited interest is required within 90 days.

(b) Remedial action may include: (1) Reassignment of the employee to a position which performs no function or duty under the Act, or

(2) Divestiture of the prohibited financial interest, or

(3) Other appropriate action which either eliminates the prohibited financial interest or eliminates the situation which creates the conflict.

(c) Reports of noncompliance. If 90 days after an employee is notified to take remedial action that employee is not in compliance with the requirements of the Act and these regulations, the official, other than the Director, who ordered the remedial action shall promptly report the facts of the situation to the Director. The reports to the Director shall include the original or a certified true copy of the employee's statement and any other information pertinent to the Director, including a statement of actions being taken at the time the report is made. Within 30 days of receipt of a noncompliance report, the Director shall notify the head of the employing organization and the employee involved of additional action to be taken. Actions which the Director may take include but are not limited to the granting of additional time for resolution or the initiation of action to impose the penalties prescribed by the Act.

§ 706.21 Appeals procedures.

Employees have the right to appeal an order for remedial action under § 706.19 and shall have 30 days to exercise this right before disciplinary action is initiated.

(a) Office employees and other Department of the Interior employees may file their appeal, in writing, in accordance with the provisions in 43 CFR 20.735-25(b).

(b) Employees of other Federal agencies may file their appeal, in writing, in accordance with the established procedures of their employing agency.

PART 707—EXEMPTION FOR COAL EXTRACTION INCIDENT TO GOVERNMENT-FINANCED HIGHWAY OR OTHER CONSTRUCTION

Sec.
707.1 Scope.
707.4 Responsibility.
707.5 Definitions.
707.10 Information collection.
707.11 Applicability.
707.12 Information to be maintained on site.

AUTHORITY: Sec. 102, 201, 501, and 528 of Pub. L. 95-87, 91 Stat. 448, 449, 467, and 514 (30 U.S.C. 1202, 1211, 1251, 1278).

SOURCE: 44 FR 15322, Mar. 13, 1979, unless otherwise noted.

§ 707.1 Scope.

(a) This part establishes the procedures for determining those surface coal mining and reclamation operations which are exempt from the Act and this chapter because the extraction of coal is an incidental part of Federal, State, or local government-financed highway or other construction.

(b) This part exempts the extraction of coal which is incidental to government-financed construction from the requirements of the Act and this Chapter, if that extraction meets specified criteria which ensure that the construction is government-financed and that the extraction of coal is incidental to it.

§ 707.4 Responsibility.

(a) The regulatory authority is responsible for enforcing the requirements of this part.

(b) Any person conducting coal extraction as an incidental part of government-financed construction is responsible for possessing, on the site of the extraction operation, the documentation required by 30 CFR 707.12.

§ 707.5 Definitions.

As used in this part, the following terms have the specified meaning:

Extraction of coal as an incidental part means the extraction of coal which is necessary to enable the construction to be accomplished. For purposes of this part, only that coal extracted from within the right-of-way, in the case of a road, railroad, utility line or other such construction, or within the boundaries of the area directly affected by other types of government-financed construction, may be considered incidental to that construction. Extraction of coal outside the right-of-way or boundary of the area directly affected by the construction shall be subject to the requirements of the Act and this chapter.

Government financing agency means a Federal, State, county, municipal, or local unit of government, or a department, bureau, agency or office of the unit which, directly or through another unit of government, finances construction.

Government-financed construction means construction funded 50 percent or more by funds appropriated from a government financing agency's budget or obtained from general revenue bonds, but shall not mean government financing agency guarantees, insurance, loans, funds obtained through industrial revenue bonds or their equivalent, or in-kind payments.

§ 707.10 Information collection.

Since the information collection requirement contained in 30 CFR 707.12 has fewer than 10 respondents per year, it is exempt from the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) and does not require clearance by OMB.

(30 U.S.C. 1201 *et seq.*)

[47 FR 33684, Aug. 4, 1982]

§ 707.11 Applicability.

(a) Coal extraction which is an incidental part of government-financed construction is exempt from the Act and this chapter.

(b) Any person who conducts or intends to conduct coal extraction which does not satisfy paragraph (a) of this section shall not proceed until a permit has been obtained from the regulatory authority under a State, Federal or Federal lands program.

§ 707.12 Information to be maintained on site.

Any person extracting coal incident to government-financed highway or other construction who extracts more than 250 tons of coal or affects more than two acres shall maintain, on the site of the extraction operation and available for inspection, documents which show—

(a) A description of the construction project;

(b) The exact location of the construction, right-of-way or the boundaries of the area which will be directly affected by the construction; and

(c) The government agency which is providing the financing and the kind and amount of public financing, including the percentage of the entire construction costs represented by the government financing.

SUBCHAPTER B—INITIAL PROGRAM REGULATIONS

PART 710—INITIAL REGULATORY PROGRAM

Sec.

710.1 Scope.
710.2 Objectives.
710.3 Authority.
710.4 Responsibility.
710.5 Definitions.
710.10 Information collection.
710.11 Applicability.
710.12 Special exemption for small operators.

AUTHORITY: Sec. 201, 501, and 502, Pub. L. 95-87, 91 Stat. 445 (30 U.S.C. 1201).

SOURCE: 42 FR 62677, Dec. 13, 1977, unless otherwise noted.

§ 710.1 Scope.

(a) This part provides general introductory and applicability material for the initial regulatory program required by section 502 and other sections of the Act which require early implementation. The initial regulatory program is effective until permanent programs are approved in accordance with sections 503, 504, or 523 of the Act.

(b) The initial regulatory program which this part introduces includes—

(1) Environmental performance standards of Parts 715 through 718 of this chapter.

(2) Inspection and enforcement procedures of Parts 720 through 723 of this chapter; and

(3) Reimbursements to States of Part 725 of this chapter.

§ 710.2 Objectives.

The objectives of the initial regulatory program are to—

(a) Protect the health and safety of the public and minimize the damage to the environment resulting from surface coal mining operations during the interval between enactment of the Act and adoption of a permanent State or Federal regulatory program; and

(b) Coordinate the State and Federal regulatory programs to accomplish the purposes of the Act.

§ 710.3 Authority.

(a) The Secretary is directed to implement an initial regulatory program within six months after the date of enactment of the Act in each State which regulates any aspect of surface coal mining under one or more State laws until a State program has been approved or until a Federal program has been implemented.

(b) The Secretary is also authorized to regulate surface coal mining and reclamation operations on Federal Lands by the Mineral Leasing Act of February 25, 1920, as amended (30 U.S.C. 181-287) and the Minerals, Leasing Act for Acquired Lands (30 U.S.C. 351-359) and on Indian lands by various Indian lands acts. Additional regulations under these Acts are in 30 CFR Part 211,[1] 43 CFR Part 3041 and 25 CFR Part 177.

§ 710.4 Responsibility.

(a) Under the general direction of the Assistant Secretary, Energy and Minerals, the Director is responsible for administering the initial regulatory program established by the Secretary.

(b) The States are responsible for issuing permits and inspection and enforcement on lands on which operations are regulated by a State to insure compliance with the initial performance standards in Parts 715 through 718 of this chapter. States are required to file copies of inspection reports with the Office. States are also responsible for assuring that permits are not issued which would be in conflict with the restriction on mining found in section 510 of the Act, particularly in regard to alluvial valley floors and prime farm lands, and section 522(e) of the Act in regard to prohibitions of mining on certain lands.

§ 710.5 Definitions.

As used throughout the initial regulatory program the following terms have the specified meanings unless otherwise indicated:

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[1] Editorial Note: 30 CFR Part 211 was redesignated as 43 CFR Part 3480 at 48 FR 41589, Sept. 16, 1983.

Acid drainage means water with a pH of less than 6.0 discharged from active or abandoned mines and from areas affected by coal mining operations.

Acid-forming materials means earth materials that contain sulfide mineral or other materials which, if exposed to air, water, or weathering processes, will cause acids that may create acid drainage.

Alluvial valley floors means unconsolidated stream-laid deposits holding streams where water availability is sufficient for subirrigation or flood irrigation agricultural activities but does not include upland areas which are generally overlain by a thin veneer of colluvial deposits composed chiefly of debris from sheet erosion, deposits by unconcentrated runoff or slope wash, together with talus, other mass movement accumulation and windblown deposits.

Approximate original contour means that surface configuration achieved by backfilling and grading of the mined area so that the reclaimed area, including any terracing or access roads, closely resembles the general surface configuration of the land prior to mining and blends into and complements the drainage pattern of the surrounding terrain, with all highwalls and spoil piles eliminated; water impoundments may be permitted where the regulatory authority determines that they are in compliance with § 715.17.

Aquifer means a zone, stratum, or group of strata that can store and transmit water in sufficient quantities for a specific use.

Combustible material means organic material that is capable of burning either by fire or through a chemical process (oxidation) accompanied by the evolution of heat and a significant temperature rise.

Compaction means the reduction of pore spaces among the particles of soil or rock, generally done by running heavy equipment over the earth materials.

Disturbed area means those lands that have been affected by surface coal mining and reclamation operations.

Diversion means a channel, embankment, or other manmade structure constructed for the purpose of diverting water from one area to another.

Downslope means the land surface between a valley floor and the projected outcrop of the lowest coalbed being mined along each highwall.

Embankment means an artificial deposit of material that is raised above the natural surface of the land and used to contain, divert, or store water, support roads or railways, or other similar purposes.

Essential hydrologic functions means, with respect to alluvial valley floors, the role of the valley floor in collecting, storing, and regulating the natural flow of surface water and ground water, and in providing a place for irrigated and subirrigated farming, by reason of its position in the landscape and the characteristics of its underlying material.

Flood irrigation means irrigation through natural overflow or the temporary diversion of high flows in which the entire surface of the soil is covered by a sheet of water.

Ground water means subsurface water that fills available openings in rock or soil materials such that they may be considered water-saturated.

Head-of-hollow fill means a fill structure consisting of any material, other than coal processing waste and organic material, placed in the uppermost reaches of a hollow where side slopes of the fill measured at the steepest point are greater that 20° or the profile of the hollow from the toe of the fill to the top of the fill is greater than 10°. In fills with less than 250.00 cubic yards of material, associated with contour mining, the top surface of the fill will be at the elevation of the coal seam. In all other head-of-hollow fills, the top surface of the fill, when completed, is at approximately the same elevation as the adjacent ridge line, and no significant area of natural drainage occurs above the fill draining into the fill area.

Highwall means the face of exposed overburden and coal in an open cut of a surface or for entry to an underground coal mine.

Hydrologic balance means the relationship between the quality and quantity of inflow to, outflow from, and storage in a hydrologic unit such as a drainage basin, aquifer, soil zone, lake, or reservoir. It encompasses the quantity and quality relationships between precipitation, runoff, evaporation, and the change in ground and surface water storage.

Hydrologic regime means the entire state of water movement in a given area. It is a function of the climate, and includes the phenomena by which water first occurs as atmospheric water vapor, passes into a liquid or solid form and falls as precipitation, moves thence along or into the ground surface, and returns to the atmosphere a vapor by means of evaporation and transpiration.

Impoundment means a closed basin formed naturally or artificially built, which is dammed or excavated for the retention of water, sediment, or waste.

Intermittent or perennial stream means a stream or part of a stream that flows continuously during all (perennial) or for at least one month (intermittent) of the calendar year as a result of ground-water discharge or surface runoff. The term does not include an ephemeral stream which is one that flows for less than one month of a calendar year and only in direct response to precipitation in the immediate watershed and whose channel bottom is always above the local water table.

Leachate means a liquid that has percolated through soil, rock, or waste and has extracted dissolved or suspended materials.

Noxious plants means species that have been included on official State lists of noxious plants for the State in which the operation occurs.

Overburden means material of any nature, consolidated or unconsolidated, that overlies a coal deposit, excluding topsoil.

Outslope means the exposed area sloping away from a bench or terrace being constructed as a part of a surface coal mining and reclamation operation.

Productivity means the vegetative yield produced by a unit area for a unit of time.

Recharge capacity means the ability of the soils and underlying materials to allow precipitation and runoff to infiltrate and reach the zone of saturation.

Roads means access and haul roads constructed, used, reconstructed, improved, or maintained for use in surface coal mining and reclamation operations, including use by coal-hauling vehicles leading to transfer, processing, or storage areas. The term includes any such road used and not graded to approximate original contour within 45 days of construction other than temporary roads used for topsoil removal and coal haulage roads within the pit area. Roads maintained with public funds such as all Federal, State, county, or local roads are excluded.

Recurrence interval means the precipitation event expected to occur, on the average, once in a specified interval. For example, the 10-year 24-hour precipitation event would be that 24-hour precipitation event expected to be exceeded on the average once in 10 years. Magnitude of such events are as defined by the National Weather Service Technical Paper No. 40, "Rainfall Frequency Atlas of the U.S.," May 1961, and subsequent amendments or equivalent regional or rainfall probability information developed therefrom.

Runoff means precipitation that flows overland before entering a defined stream channel and becoming streamflow.

Safety factor means the ratio of the available shear strength to the developed shear stress on a potential surface of sliding determined by accepted engineering practice.

Sediment means undissolved organic and inorganic material transported or deposited by water.

Sedimentation pond means any natural or artifical structure or depression used to remove sediment from water and store sediment or other debris.

Slope means average inclination of a surface, measured from the horizontal. Normally expressed as a unit of vertical distance to a given number of units of horizontal distance (e.g., $1v$ to $5h = 20$ percent $= 11.3$ degrees).

Soil horizons means contrasting layers of soil lying one below the other, parallel or nearly parallel to the land surface. Soil horizons are differentiated on the basis of field characteristics and laboratory data. The three major soil horizons are—

(a) *A horizon.* The uppermost layer in the soil profile often called the surface soil. It is the part of the soil in which organic matter is most abundant, and where leaching of soluble or suspended particles is the greatest.

(b) *B horizon.* The layer immediately beneath the A horizon and often called the subsoil. This middle layer commonly contains more clay, iron, or aluminum than the A or C horizons.

(c) *C horizon.* The deepest layer of the soil profile. It consists of loose material or weathered rock that is relatively unaffected by biologic activity.

Spoil means overburden that has been removed during surface mining.

Stabilize means any method used to control movement of soil, spoil piles, or areas of disturbed earth and includes increasing bearing capacity, increasing shear strength, draining, compacting, or revegetating.

Subirrigation means irrigation of plants with water delivered to the roots from underneath.

Surface water means water, either flowing or standing, on the surface of the earth.

Suspended solids means organic or inorganic materials carried or held in suspension in water that will remain on a 0.45 micron filter.

Toxic-forming materials means earth materials or wastes which, if acted upon by air, water, weathering, or microbiological processes, are likely to produce chemical or physical conditions in soils or water that are detrimental to biota or uses of water.

Toxic-mine drainage means water that is discharged from active or abandoned mines and other areas affected by coal mining operations and which contains a substance which through chemical action or physical effects is likely to kill, injure, or impair biota commonly present in the area that might be exposed to it.

Valley fill means a fill structure consisting of any material other than coal waste and organic material that is placed in a valley where side slopes of the fill measured at the steepest point are greater than 20° or the profile of the hollow from the toe of the fill to the top of the fill is greater than 10°.

Waste means earth materials, which are combustible, physically unstable, or acid-forming or toxic-forming, wasted or otherwise separated from product coal and are slurried or otherwise transported from coal processing facilities or preparation plants after physical or chemical processing, cleaning, or concentrating of coal.

Water table means upper surface of a zone of saturation, where the body of ground water is not confined by an overlying impermeable zone.

[42 FR 62677, Dec. 13, 1977, as amended at 44 FR 30628, May 25, 1979]

§ 710.10 Information collection.

Since the information collection requirements contained in 30 CFR 710.4(b); 710.11(d)(2)(ii); 710.12(e) have fewer than 10 respondents per year, they are exempt from the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) and do not require clearance by OMB.

[47 FR 33685, Aug. 4, 1982]

§ 710.11 Applicability.

(a) *Operations on lands on which such operations are regulated by a State.* (1) The requirements of the initial regulatory program do not apply to surface mining and reclamation operations which occur on lands within a State which does not regulate any part of such operations.

(2) *General obligations.* (i) A person conducting coal mining operations shall have a permit if required by the State in which he is mining and shall comply with State laws and regulations that are not inconsistent with the Act and this chapter.

(ii) A person conducting coal mining operations shall not engage in any operations which result in a condition or constitute a practice that creates an imminent danger to the health or safety of the public.

(iii) A person conducting coal mining operations shall not engage in any operations which result in a condition or constitute a practice that causes or can reasonably be expected to cause significant, imminent environmental harm to land, air, or water resources.

(3) *Performance standards obligations.* (i) A person who conducts any coal mining operations under an initial permit issued by a State on or after February 3, 1978, shall comply with the requirements of the initial regulatory program. Such permits shall contain terms that comply with the relevant performance standards of the initial regulatory program.

(ii) On and after May 3, 1978, any person conducting coal mining operations shall comply with the initial regulatory program, except as provided in § 710.12 of this part.

(iii) A person shall comply with the obligations of this section until he has received a permit to operate under a permanent State or Federal regulatory program.

(b) *Operations on Indian lands.* Until OSM makes an initial administrative decision on a permit application under Part 750 of this chapter, a person conducting coal mining operations on Indian lands shall comply with the performance standards of this chapter insofar as they are incorporated in 25 CFR Part 216, Subpart B.

(c) *Operations on Federal lands.* (1) A person conducting coal mining operations on Federal lands under a permit approved on or after February 3, 1978, shall comply with the performance standards of this chapter.

(2) Any person conducting coal mining operations on Federal lands on and after May 3, 1978, shall comply with the performance standards of this chapter.

(d) *Operations on all lands.* (1) The requirements of this chapter apply to operations conducted after the effective date of these regulations on lands from which the coal has not yet been removed and to any other lands used, disturbed, or redisturbed in connection with or to facilitate mining or to comply with the requirements of the Act or these regulations.

(2) Any pre-existing, nonconforming structure or facility which is used in connection with or to facilitate mining after the effective date of these regulations shall comply with the requirements of the regulations, unless—

(i) The permittee submits to the regulatory authority by March 1, 1978, a statement in writing demonstrating that it is physically impossible to bring the structure or facility into compliance by May 4, 1978. The statement shall include the steps to be taken to reconstruct the structure or facility in conformance with applicable performance standards and a schedule for reconstruction including the estimated date of completion;

(ii) The regulatory authority finds in writing that it is physically impossible to bring the structure or facility into compliance by May 4, 1978;

(iii) The construction work is to be performed in accordance with plans designed by a professional engineer; and

(iv) The construction work is to be started and completed as soon as possible and in no event is to be started later than May 4, 1978 and completed later than November 4, 1978.

(3) Notwithstanding paragraph (d)(2) of this section, any sedimentation pond, or related pre-existing, nonconforming structure or facility which is used in connection with or to facilitate mining after the effective date of these regulations shall comply with the requirements of the regulations unless—

(i) The permittee submits to the regulatory authority and to the Director by May 3, 1978, a statement in writing demonstrating that it is physically impossible to bring the structure or facility into compliance by May 3, 1978. The statement shall include the steps to be taken to reconstruct the structure or facility in conformance with applicable performance standards and a schedule for reconstruction including the estimated date of completion;

(ii) The regulatory authority finds in writing that it is physically impossible to bring the structure or facility into compliance by May 3, 1978;

(iii) The construction work is to be performed in accordance with plans designed by a professional engineer;

(iv) The construction work is to be started and completed as soon as possible and in no event is to be started later than June 3, 1978 and completed later than November 4, 1978; and

(v) The Director approves of any schedules which contain an estimated date of completion beyond October 3, 1978.

(4) The Director shall be deemed to have approved such schedules referred to in paragraph (d)(3)(v) of this section, unless written disapproval is received by the operator on or before June 3, 1978.

[42 FR 62677, Dec. 13, 1977; 43 FR 2721, Jan. 19, 1978, as amended at 43 FR 5001, Feb. 7, 1978; 43 FR 8091, Feb. 27, 1978; 49 FR 38477, Sept. 28, 1984]

§ 710.12 Special exemption for small operators.

(a) As used in this section—

(1) *Permittee* means a person holding a permit under State law and to whom the permit was originally issued.

(2) *Renewed permit* means any extension of the original area of duration of a permit.

(b) If a person is an eligible permittee under paragraph (c) of this section and intends to conduct surface coal mining operations on or after May 3, 1978, that permittee may receive from the Director a limited exemption from the performance standards of this chapter. The exemption shall not—

(1) Include the Special Performance Standard of § 716.2(a)(1) of this chapter regarding the handling of spoil;

(2) Apply to surface coal mining operations to be conducted under a permit or renewed permit issued on or after August 3, 1977;

(3) Include any general or special performance standard with which a permittee is required to comply by a State;

(4) Relieve the permittee of the general obligations imposed by § 710.11(a) of this part regarding conditions or practices creating imminent danger or causing significant, imminent environmental harm; or

(5) Relieve the permittee of any obligations under State law, regulation or permit.

(c) A permittee is eligible for an exemption under this section—

(1) If the actual and attributed production of that permittee is estimated by the Director not to exceed 100,000 tons of coal during the year ending on December 31, 1978; and

(2) If that permittee—

(i) Was in existence on July 31, 1976, and during the year ending on July 31, 1977, the actual and attributed production of that permittee was 100,000 tons of coal or less from all surface and underground coal mining operations; or

(ii) Came into existence after July 31, 1976, and prior to May 2, 1977, and the actual and attributed production from all surface and underground coal mining operations of that permittee in the average calendar month was an amount of coal which when multiplied by 12 yields a product of 100,000 tons or less.

(iii) And, in the case of a business organization, has not undergone a substantial change in ownership since May 2, 1977, other than a substantial change due to the death of an owner.

(d) Application for an exemption under this section shall be submitted to the Director of the Office by March 1, 1978 with a copy to the State regulatory authority.

(e) The request for exemption shall be in the form of an affidavit under oath and shall include—

(1) The name and address of the permittee and of persons who control the permittee by reason of stock ownership or otherwise.

(2) The name, location, Mining Enforcement and Safety Administration identification numbers, and permit numbers of the surface coal mining operations for which exemption is sought, including a statement of the dates each permit was issued or renewed and will expire.

(3) The date and method by which the permittee was created if the permittee is not an individual.

(4) A listing of all surface and underground coal mining operations showing—

(i) Actual production for the year ending July 31, 1977, attributed to the permittee and the inclusive dates of operation.

(ii) Estimated production for the year ending December 31, 1978, attributed to the permittee and the anticipated dates of operation.

(5) A copy of coal severance tax returns for coal produced during the year ending on July 31, 1977.

(6) A copy of a notice the permittee has published in a local newspaper of general circulation in the area of each mine for which an exemption is sought once a week for two weeks stating—

(i) That an application for a small operator exemption will be filed, which if granted would exempt the operator from certain environmental protection performance standards in the Act;

(ii) The name and address of the permittee;

(iii) The location of the surface coal mining operations to which the exemption will apply; and

(iv) That public comments may be submitted to the Director, Office of Surface Mining Reclamation and Enforcement.

(f) Production from the following operations shall be attributed to the permittee—

(1) All coal produced by operations beneficially owned entirely by the permittee, or controlled by reasons of ownership, direction of the management, or in any other manner by the permittee.

(2) The pro rata share, based upon percentage of beneficial ownership, of coal produced by operations in which the permittee owns more than a 5-percent interest.

(3) All coal produced by persons who own more than 5 percent of the permittee or who directly or indirectly control the permittee by reason of stock ownership, direction of the management or in any other manner.

(4) The pro rata share of coal produced by operations owned or controlled by the person who owns or controls the permittee.

(g) The Director shall grant the request for an exemption if, upon the basis of the request and any State regulatory authority or public comments, or any other information, he finds that—

(1) The permittee has satisfied his burden of proof by demonstrating eligibility for the exemption; and

(2) The exemption will not be inconsistent with State law, regulation or permit terms.

(h) Any person aggrieved by the decision of the Director under this section may appeal within 20 days from receipt of that decision to The Office of Hearing and Appeals under 43 CFR Part 4. The Office of Hearings and Appeals and the Secretary shall have the authority to stay the exemption pending the outcome of the appeal.

(i) The exemption shall be effective on the date approved. It shall remain in effect until expiration or renewal of the State permit to which it applies, December 31, 1978, or until revoked, whichever is earlier.

(j) The Director shall revoke the exemption upon finding that the exemption was erroneously issued or that the exempted operation has or will produce more than 100,000 tons of coal per year.

[42 FR 62677, Dec. 13, 1977; 43 FR 2721, Jan. 19, 1978, as amended at 43 FR 5001, Feb. 7, 1978]

PART 715—GENERAL PERFORMANCE STANDARDS

Sec.
715.10 Information collection.
715.11 General obligations.
715.12 Signs and markers.
715.13 Postmining use of land.
715.14 Backfilling and grading.
715.15 Disposal of excess spoil.
715.16 Topsoil handling.
715.17 Protection of the hydrologic system.
715.18 Dams constructed of or impounding waste material.
715.19 Use of explosives.
715.20 Revegetation.
715.200 Interpretative rules related to general performance standards.

AUTHORITY: Pub. L. 95-87 (30 U.S.C. 1201 *et seq.*).

SOURCE: 42 FR 62680, Dec. 13, 1977, unless otherwise noted.

§ 715.10 Information collection.

The information collection requirements contained in 30 CFR 715.13(d); 715.17 (b)(1)(v) and (j)(3); 715.18(b) (2) and (6); and 715.19 (b), (c), (d) and (e)(4) have been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned clearance number 1029-0007. The information is being collected to meet the performance standards in section 515(b)(2) of P.L. 95-87 and are applicable during the initial regulatory program. This information will be used by OSM in measuring compliance with the performance standards until permanent programs are in effect in the States. The obligation to respond is mandatory.

[47 FR 33685, Aug. 4, 1982]

§ 715.11 General obligations.

(a) *Compliance.* All surface coal mining and reclamation operations conducted on lands where any element of the operations is regulated by a State shall comply with the initial performance standards of this part according to the time schedule specified in § 710.11. Part 717 of this chapter establishes performance standards for surface effects of underground coal mines. Initial regulations regarding the special Initial Performance Standards are established by Part 716 of this chapter for—

(1) Surface coal mining operations on steep slopes;

(2) Surface coal mining operations involving mountaintop removal;

(3) Special bituminous coal mines;

(4) Anthracite surface coal mining operations;

(5) Surface coal mining operations in Alaska; and

(6) Surface coal mining operations on prime farmlands.

Where State environmental protection standards are adopted for a specific State because they are more stringent than the standards of Parts 715, 716, and 717, they will be published in Part 718 of this chapter.

(b) *Authorizations to operate.* A copy of all current permits, licenses, approved plans, or other authorizations to operate the mine shall be available for inspection at or near the mine site.

(c)(1) *Mine maps.* Any person conducting surface coal mining and reclamation operations on and after May 3, 1978, shall submit two copies of an accurate map of the mine and permit area at a scale of 1:6000 or larger. The map shall show as of May 3, 1978, the lands from which coal has not yet been removed and the lands and structures which have been used or disturbed to facilitate mining. One copy of the mine map shall be submitted to the State regulatory authority and one copy shall be submitted to the Regional Director, OSM, before July 3, 1978.

(2) In addition to the requirements of paragraph (c)(1) of this section, any person who conducted surface coal mining and reclamation operations pursuant to a small operator's exemption shall submit before March 15, 1979, two copies of an accurate map of each mine showing the permit area at a scale of 1:6000 or larger. One copy shall be submitted to the state regulatory authority and one copy to the appropriate Regional Director, OSM. The map shall show as of December 31, 1978 or the expiration date of the exemption (whichever is earlier) the lands from which coal had not yet been removed, the lands and structures which had been used or disturbed to facilitate mining, and the lands which had not been disturbed. The map need not be submitted if these areas have already been shown on mine maps submitted to the state regulatory authority, if a copy is available to the appropriate Regional Director pursuant to paragraph (c)(1) of this section or 30 CFR 720.13(b).

[42 FR 62680, Dec. 13, 1977, as amended at 44 FR 6682, Feb. 1, 1979]

§ 715.12 Signs and markers.

(a) *Specifications.* All signs required to be posted shall be of a standard design that can be seen and read easily and shall be made of durable material. The signs and other markers shall be maintained during all operations to which they pertain and shall conform to local ordinances and codes.

(b) *Mine and permit identification signs.* Signs identifying the mine area shall be displayed at all points of access to the permit area from public roads and highways. Signs shall show the name, business address, and telephone number of the permittee and identification numbers of current mining and reclamation permits or other authorizations to operate. Such signs shall not be removed until after release of all bonds.

(c) *Perimeter markers.* The perimeter of the permit area shall be clearly marked by durable and easily recognized markers, or by other means approved by the regulatory authority.

(d) *Buffer zone markers.* Buffer zones as defined in § 715.17 shall be marked in a manner consistent with the perimeter markers along the interior boundary of the buffer zone.

(e) *Blasting signs.* If blasting is necessary to conduct surface coal mining operations, signs reading "Blasting Area" shall be displayed conspicuously at the edge of blasting areas along access and haul roads within the mine property. Signs reading "Blasting Area" and explaining the blasting warning and all-clear signals shall be posted at all entrances to the permit area.

(f) *Topsoil markers.* Where topsoil or other vegetation-supporting material is segregated and stockpiled according to § 715.16(c), the stockpiled material shall be marked. Markers shall remain in place until the material is removed.

§ 715.13 Postmining use of land.

(a) *General.* All disturbed areas shall be restored in a timely manner (1) to conditions that are capable of supporting the uses which they were capable of supporting before any mining, or (2) to higher or better uses achievable under criteria and procedures of paragraph (d) of this section.

(b) *Determining premining use of land.* The premining uses of land to which the postmining land use is compared shall be those uses which the land previously supported if the land had not been previously mined and had been properly managed.

(1) The postmining land use for land that has been previously mined and not reclaimed shall be judged on the basis of the highest and best use that can be achieved and is compatible with surrounding areas.

(2) The postmining land use for land that has received improper management shall be judged on the basis of the premining use of surrounding lands that have received proper management.

(3) If the premining use of the land was changed within 5 years of the beginning of mining, the comparison of postmining use to premining use shall include a comparison with the historic use of the land as well as its use immediately preceding mining.

(c) *Land-use categories.* Land use is categorized in the following groups. Change from one to another land use category in premining to postmining constitutes an alternate land use and the permittee shall meet the requirements of paragraph (d) of this section and all other applicable environmental protection performance standards of this chapter.

(1) *Heavy industry.* Manufacturing facilities, powerplants, airports or similar facilities.

(2) *Light industry and commercial services.* Office buildings, stores, parking facilities, apartment housed, motels, hotels, or similar facilities.

(3) *Public services.* Schools, hospitals, churches, libraries, water-treatment facilities, solid-waste disposal facilities, public parks and recreation facilities, major transmission lines, major pipelines, highways, underground and surface utilities, and other servicing structures and appurtenances.

(4) *Residential.* Single- and multiple-family housing (other than apartment houses) with necessary support facilities. Support facilities may include commercial services incorporated in and comprising less than 5 percent of the total land area of housing capacity, associated open space, and minor vehicle parking and recreation facilities supporting the housing.

(5) *Cropland.* Land used primarily for the production of cultivated and close-growing crops for harvest alone or in association with sod crops. Land used for facilities in support of farming operations are included.

(6) *Rangeland.* Includes rangelands and forest lands which support a cover of herbaceous or scrubby vegetation suitable for grazing or browsing use.

(7) *Hayland or pasture.* Land used primarily for the long-term production of adapted, domesticated forage plants to be grazed by livestock or cut and cured for livestock feed.

(8) *Forest land.* Land with at least a 25 percent tree canopy or land at least 10 percent stocked by forest trees of any size, including land formerly having had such tree cover and that will be naturally or artificially reforested.

(9) *Impoundments of water.* Land used for storing water for beneficial uses such as stock ponds, irrigation, fire protection, recreation, or water supply.

(10) *Fish and wildlife habitat and recreation lands.* Wetlands, fish and wildlife habitat, and areas managed primarily for fish and wildlife or recreation.

(11) *Combined uses.* Any appropriate combination of land uses where one land use is designated as the primary land use and one or more other land uses are designated as secondary land uses.

(d) *Criteria for approving alternative postmining use of land.* An alternative postmining land use shall be approved by the regulatory authority, after consultation with the landowner or the land-management agency having jurisdiction over State or Federal lands, if the following criteria are met. Proposals to remove an entire coal seam running through the upper part of a mountain, ridge, or hill must also meet these criteria in addition to the requirements of § 716.3 of this chapter.

(1) The proposed land use is compatible with adjacent land use and, where applicable, with existing local, State or Federal land use policies and plans. A written statement of the views of the authorities with statutory responsibilities for land use policies and plans shall accompany the request for approval. The permittee shall obtain any required approval of local, State or Federal land management agencies, including any necessary zoning or other changes necessarily required for the final land use.

(2) Specific plans have been prepared which show the feasibility of the proposed land use as related to needs, projected land use trends, and markets and that include a schedule showing how the proposed use will be developed and achieved within a reasonable time after mining and be sustained. The regulatory authority may require appropriate demonstrations to show that the planned procedures are feasible, reasonable, and integrated with mining and reclamation, and that the plans will result in successful reclamation.

(3) Provision of any necessary public facilities is assured as evidenced by letters of commitment from parties other than the permittee, as appropriate, to provide them in a manner compatible with the permittee's plans.

(4) Specific and feasible plans for financing attainment and maintenance of the postmining land use including letters of commitment from parties other than the permittee as appropriate, if the postmining land use is to be developed by such parties.

(5) The plans are designed under the general supervision of a registered professional engineer, or other appropriate professional, who will ensure that the plans conform to applicable accepted standards for adequate land stability, drainage, and vegetative cover, and aesthetic design appropriate for the postmining use of the site.

(6) The proposed use or uses will neither present actual or probable hazard to public health or safety nor will they pose any actual or probable threat of water flow diminution or pollution.

(7) The use or uses will not involve unreasonable delays in reclamation.

(8) Necessary approval of measures to prevent or mitigate adverse effects on fish and wildlife has been obtained from the regulatory authority and appropriate State and Federal fish and wildlife management agencies.

(9) Proposals to change premining land uses of range, fish and wildlife habitat, forest land, hayland, or pasture to a postmining cropland use, where the cropland would require continous maintenance such as seeding, plowing, cultivation, fertilzation, or other similar practices to be practicable or to comply with applicable Federal, State, and local laws, shall be reviewed by the regulatory authority to assure that—

(i) There is a firm written commitment by the permittee or by the landowner or land manager to provide sufficient crop management after release of applicable performance bonds to assure that the proposed postmining cropland use remains practical and reasonable;

(ii) There is sufficient water available and committed to maintain crop production; and

(iii) Topsoil quality and depth are shown to be sufficient to support the proposed use.

(10) The regulatory authority has provided by public notice not less than 45 days nor more than 60 days for interested citizens and local, State and Federal agencies to review and comment on the proposed land use.

[42 FR 62680, Dec. 13, 1977; 43 FR 2721, Jan. 19, 1978]

§ 715.14 Backfilling and grading.

In order to achieve the approximate orginal contour, the permittee shall, except as provided in this section, transport, backfill, compact (where advisable to ensure stability or to prevent leaching of toxic materials), and grade all spoil material to eliminate all highwalls, spoil piles, and depressions. Cut-and-fill terraces may be used only in those situations expressly identified in this section. The postmining graded slopes must approximate the premining natural slopes in the area as defined in paragraph (a).

(a) *Slope measurements.* (1) To determine the natural slopes of the area before mining, sufficient slopes to adequately represent the land surface configuration, and as approved by the regulatory authority in accordance with site conditions, must be accurately measured and recorded. Each measurement shall consist of an angle of inclination along the prevailing slope extending 100 linear feet above and below or beyond the coal outcrop or the area to be disturbed; or, where this is impractical, at locations specified by the regulatory authority. Where the area has been previously mined, the measurements shall extend at least 100 feet beyond the limits of mining disturbances as determined by the regulatory authority to be representative of the premining configuration of the land. Slope measurements shall take into account natural variations in slope so as to provide accurate representation of the range of natural slopes and shall reflect geomorphic differences of the area to be disturbed. Slope measurements may be made from topographic maps showing contour lines, having sufficient detail and accuracy consistent with the submitted mining and reclamation plan.

(2) After the disturbed area has been graded, the final graded slopes shall be measured at the beginning and end of lines established on the prevailing slope at locations representative of premining slope conditions and approved by the regulatory authority. These measurements must not be made so as to allow unacceptably steep slopes to be constructed.

(b) *Final graded slopes.* (1) The final graded slopes shall not exceed either the approximate premining slopes as determined according to paragraph (a)(1) and approved by the regulatory authority or any lesser slope specifed by the regulatory based on consideration of soil, climate, or other characteristics of the surrounding area. Postmining final graded slopes need not be uniform. The requirements of this paragraph may be modifed by the regulatory authority where the mining is reaffecting previously mined lands that have not been restored to the standards of this section and sufficient spoil is not available to return to the slope determined according to paragraph (a)(1). Where such modifications are approved, the permittee shall, as a minimum, be required to—

(i) Retain all overburden and spoil on the solid portion of existing or new benches; and

(ii) Backfill and grade to the most moderate slope possible to eliminate the highwall which does not exceed the angle of repose or such lesser slopes as is necessary to assure stability.

(2) On approval by the regulatory authority and in order to conserve soil moisture, ensure stability, and control erosion on final graded slopes, cut-and-fill terraces may be allowed if the terraces are compatible with the postmining land use approved under § 715.13, and are appropriate substitutes for construction of lower grades on the reclaimed lands. The terraces shall meet the following requirements:

(i) Where specialized grading, foundation conditions, or roads are required for the approved postmining land use, the final grading may include a terrace of adequate width to ensure the safety, stability, and erosion control necessary to implement the postmining land use plan.

(ii) The vertical distance between terraces shall be as specified by the regulatory authority to prevent excessive erosion and to provide long-term stability.

(iii) The slope of the terrace outslope shall not exceed 1*v*:2*h* (50 percent). Outslopes which exceed 1*v*:2*h* (50 percent) may be approved if they have a minimum static safety factor of more than 1.5 and provide adequate control over erosion and closely resemble the surface configuration of the land prior to mining. In no case may highwalls be left as part of terraces.

(iv) Culverts and underground rock drains shall be used on the terrace only when approved by the regulatory authority.

(3) All operations on steep slopes of 20 degrees or more or on such lesser slopes as the regulatory authority defines as a steep slope shall meet the provisions of § 716.2 of this chapter.

(c) *Mountaintop removal.* The requirements of this paragraph and of § 716.3 shall apply to surface mining operations which remove entire coal seams in the upper part of a mountain, ridge, or hill by removing all of the overburden, and where the requirements for achieving the approximate original contour of this section cannot be met. Final graded top plateau slopes on the mined area shall be less than 1*v*:5*h* so as to create a level plateau or gently rolling configuration and the outslopes of the plateau shall not exceed 1*v*:2*h*, except where engineering data substantiates and the regulatory authority finds that a minimum static safety factor of 1.5 (or higher factors specified by the regulatory authority) will be attained. Although the area need not be restored to approximate original contour, all highwalls, spoil piles, and depressions except as provided in paragraphs (d) and (e) of this section shall be eliminated. All mountaintop removal operations shall in addition meet the provisions of § 716.3 of this chapter.

(d) *Small depressions.* The requirement of this section to achieve approximate original contour does not prohibit construction of small depressions if they are approved by the regulatory authority to minimize erosion, conserve soil moisture or promote revegetation. These depressions shall be compatible with the approved postmining land use and shall not be inappropriate substitutes for construction of lower grades on the reclaimed lands. Depressions approved under this section shall have a holding capacity of less than 1 cubic yard of water or, if it is necessary that they be larger, shall not restrict normal access throughout the area or constitute a hazard. Large, permanent impoundments shall be governed by paragraph (e) of this section and by § 715.17.

(e) *Permanent impoundments.* Permanent impoundments may be retained in mined and reclaimed areas provided all highwalls are eliminated by grading to appropriate contour and the provisions for postmining land use (§ 715.13) and protection of the hydrologic balance (§ 715.17) are met. No impoundments shall be constructed on top of areas in which excess materials are deposited pursuant to § 715.15 of this part. Impoundments shall not be used to meet the requirements of paragraph (j) of this section.

(f) *Definition of thin and thick restored overburden.* The thin overburden provisions of paragraph (g) of this section may apply only where the final thickness is less than 0.8 of the initial thickness. The thick overburden provisions of paragraph (h) of this section may apply only where the final thickness is greater than 1.2 of the initial thickness. Initial thickness is the sum of the overburden thickness and coal thickness. Final thickness is the product of the overburden thickness times the bulking factor to be determined for each mine area. The provisions of paragraphs (g) and (h) apply only when operations cannot be carried out to comply with the requirements of paragraph (a) of this section to achieve the approximate original contour.

(g) *Thin overburden.* In surface coal mining operations carried out continuously in the same limited pit area for more than 1 year from the day coal-removal operations begin and where the volume of all available spoil and suitable waste materials is demonstrated to be insufficient to achieve approximate original contour, surface coal mining operations shall be conducted to meet, at a minimum, the following standards:

(1) Transport, backfill, and grade, using all available spoil and suitable waste materials from the entire mine area, to attain the lowest practicable stable grade, which may not exceed the angle of repose, and to provide adequate drainage and long-term stability of the regraded areas.

(2) Eliminate highwalls by grading or backfilling to stable slopes not exceeding $1v$:$2h$ (50 percent), or such lesser slopes as the regulatory authority may specify to reduce erosion, maintain the hydrologic balance, or allow the approved postmining land use.

(3) Transport, backfill, grade, and revegetate to achieve an ecologically sound land use compatible with the prevailing land use in unmined areas surrounding the permit area.

(4) Transport, backfill, and grade to ensure the impoundments are constructed only where it has been demonstrated to the regulatory authority's satisfaction that all requirements of § 715.17 have been met and that the impoundments have been approved by the regulatory authority as meeting the requirements of this part and all other applicable Federal and State regulations.

(h) *Thick overburden.* In surface coal mining operations where the volume of spoil is demonstrated to be more than sufficient to achieve the approximate original contour surface coal mining operations shall be conducted to meet at a minimum the following standards:

(1) Transport, backfill, and grade all spoil and wastes not required to achieve approximate original contour in the surface mining area to the lowest practicable grade.

(2) Deposit, backfill, and grade excess spoil and wastes only within the permit area and dispose of such materials in conformance with this part.

(3) Transport, backfill, and grade excess spoil and wastes to maintain the hydrologic balance in accordance with this part and to provide long-term stability.

(4) Transport, backfill, grade, and revegetate wastes and excess spoil to achieve an ecologically sound land use compatible with the prevailing land uses in unmined areas surrounding the permit area.

(5) Eliminate all highwalls and depressions except as stated in paragraph (e) of this section by backfilling with spoil and suitable waste materials.

(i) *Regrading or stabilizing rills and gullies.* When rills or gullies deeper than 9 inches form in areas that have been regraded and the topsoil replaced but vegetation has not yet been established the permittee shall fill, grade, or otherwise stabilize the rills and gullies and reseed or replant the areas according to § 715.20. The regulatory authority shall specify that rills or gullies of lesser size be stabilized if the rills or gullies will be disruptive to the approved postmining land use or may result in additional erosion and sedimentation.

(j) *Covering coal and acid-forming, toxic-forming, combustible, and other waste materials; stabilizing backfilled materials; and using waste material for fill*—(1) *Cover.* All exposed coal seams remaining after mining and any acid-forming, toxic-forming, combustible materials, or any other waste materials identified by the regulatory authority that are exposed, used, or produced during mining shall be covered with a minimum of 4 feet of nontoxic and noncombustible material; or, if necessary, treated to neutralize toxicity in order to prevent water pollution and sustained combustion, and to minimize adverse effects on plant growth and land uses. Where necessary to protect against upward migration of salts, exposure by erosion, to provide an adequate depth for plant growth, or to otherwise meet local conditions, the regulatory authority shall specify thicker amounts of cover using nontoxic material. Acid-forming or toxic-forming material shall not be buried or stored in proximity to a drainage course so as to cause or pose a threat of water pollution or otherwise violate the provisions of § 715.17 of this part.

(2) *Stabilization.* Backfilled materials shall be selectively placed and compacted wherever necessary to prevent leaching of toxic-forming materials into surface or subsurface waters in accordance with § 715.17 and wherever necessary to ensure the stability of the backfilled materials. The method of compacting material and the design specifications shall be approved by the regulatory authority before the toxic materials are covered.

(3) *Use of waste materials as fill.* Before waste materials from a coal preparation or conversion facility or from other activities conducted outside the permit area such as municipal wastes are used for fill material, it must be demonstrated to the regulatory authority by hydrogeological means and chemical and physical analyses that use of these materials will not adversely affect water quality, water flow, and vegetation; will not present hazards to public health and safety; and will not cause instability in the backfilled area.

(k) *Grading along the contour.* All final grading, preparation of overburden before replacement of topsoil, and placement of topsoil, in accordance with § 715.16, shall be done along the contour to minimize subsequent erosion and instability. If such grading, preparation or placement along the contour would be hazardous to equipment operators then grading, preparation or placement in a direction other than generally parallel to the contour may be used. In all cases, grading, preparation, or placement shall be conducted in a manner which minimizes erosion and provides a surface for replacement of topsoil which will minimize slippage.

[42 FR 62680, Dec. 13, 1977; 43 FR 2721, Jan. 19, 1978, as amended at 47 FR 18553, Apr. 29, 1982]

§ 715.15 Disposal of excess spoil.

(a) *General requirements.* (1) Spoil not required to achieve the approximate original contour within the area where overburden has been removed shall be hauled or conveyed to and placed in designated disposal areas within a permit area, if the disposal areas are authorized for such purposes in the approved permit application in accordance with paragraphs (a) through (d) of this section. The spoil shall be placed in a controlled manner to ensure—

(i) That leachate and surface runoff from the fill will not degrade surface or ground waters or exceed the effluent limitations of § 715.17(a)

(ii) Stability of the fill; and

(iii) That the land mass designated as the disposal area is suitable for reclamation and revegetation compatible with the natural surroundings.

(2) The fill shall be designed using recognized professional standards, certified by a registered professional engineer, and approved by the regulatory authority.

(3) All vegetative and organic materials shall be removed from the disposal area and the topsoil shall be removed, segregated, and stored or replaced under § 715.16. If approved by the regulatory authority, organic material may be used as mulch or may be included in the topsoil to control erosion, promote growth of vegetation, or increase the moisture retention of the soil.

(4) Slope protection shall be provided to minimize surface erosion at the site. Diversion design shall conform with the requirements of § 715.17(c). All disturbed areas, including diversion ditches that are not riprapped, shall be vegetated upon completion of construction.

(5) The disposal areas shall be located on the most moderately sloping and naturally stable areas available as approved by the regulatory authority. If such placement provides additional stability and prevents mass movement, fill materials suitable for disposal shall be placed upon or above a natural terrace, bench, or berm.

(6) The spoil shall be hauled or conveyed and placed in horizontal lifts in a controlled manner, concurrently compacted as necessary to ensure mass stability and prevent mass movement, covered, and graded to allow surface and subsurface drainage to be compatible with the natural surroundings and ensure a long-term static safety factor of 1.5.

(7) The final configuration of the fill must be suitable for postmining land uses approved in accordance with § 715.13, except that no depressions or impoundments shall be allowed on the completed fill.

(8) Terraces may be utilized to control erosion and enhance stability if approved by the regulatory authority and consistent with § 715.14(b)(2).

(9) Where the slope in the disposal area exceeds 1*v*:2.8*h* (36 percent), or such lesser slope as may be designated by the regulatory authority based on local conditions, keyway cuts (excavations to stable bedrock) or rock toe buttresses shall be constructed to stabilize the fill. Where the toe of the spoil rests on a downslope, stability analyses shall be performed to determine the size of rock toe buttresses and key way cuts.

(10) The fill shall be inspected for stability by a registered engineer or other qualified professional specialist experienced in the construction of earth and rockfill embankments at least quarterly throughout construction and during the following critical construction periods: (i) Removal of all organic material and topsoil, (ii) placement of underdrainage systems, (iii) installation of surface drainage systems, (iv) placement and compaction of fill materials, and (v) revegetation. The registered engineer or other qualified professional specialist shall provide to the regulatory authority a certified report within 2 weeks after each inspection that the fill has been constructed as specified in the design approved by the regulatory authority. A copy of the report shall be retained at the minesite.

(11) Coal processing wastes shall not be disposed of in head-of-hollow or valley fills, and may only be disposed of in other excess spoil fills, if such waste is—

(i) Demonstrated to be nontoxic and nonacid forming; and

(ii) Demonstrated to be consistent with the design stability of the fill.

(12) If the disposal area contains springs, natural or manmade watercourses, or wet-weather seeps, an underdrain system consisting of durable rock shall be constructed from the wet areas in a manner that prevents infiltration of the water into the spoil material. The underdrain system shall be protected by an adequate filter and shall be designed and constructed using standard geotechnical engineering methods.

(13) The foundation and abutments of the fill shall be stable under all conditions of construction and operation. Sufficient foundation investigation and laboratory testing of foundation materials shall be performed in order to determine the design requirements for stability of the foundation. Analyses of foundation conditions shall include the effect of underground mine workings, if any, upon the stability of the structure.

(14) Excess spoil may be returned to underground mine workings, but only in accordance with a disposal program approved by the regulatory authority and MSHA.

(15) Disposal of excess spoil from an upper actively mined bench to a lower pre-existing bench by means of gravity transport is permitted provided that:

(i) The operator receives the prior written approval of the regulatory authority upon demonstration by the operator that the spoil to be disposed of by gravity transport is not necessary for elimination of the highwall and return of the upper bench to approximate original contour;

(ii) The following conditions and performance standards in addition to the environmental performance standards of this part are met:

(A) The highwall of the lower bench intersects (meets) the upper actively mined bench with no natural slope between them;

(B) The gravity transport points are determined on a site specific basis by the operator and approved by the regulatory authority to minimize hazards to health and safety and to ensure that damage will be minimized should spoil accidentally move down-slope of the lower bench;

(C) The excess spoil is placed only on solid portions of the lower pre-existing bench;

(D) All excess spoil on the lower solid bench, including that spoil immediately below the gravity transport points, is rehandled and placed in a controlled manner to eliminate as much of the lower highwall as practicable. Rehandling and placing the excess spoil on the lower solid bench shall consist of placing the excess spoil in horizontal lifts in a controlled manner, concurrently compacted as necessary to ensure mass stability and prevent mass movement, and graded to allow surface and subsurface drainage to be compatible with the natural surroundings to ensure a long term static safety factor of 1.3. Spoil on the bench prior to the current mining operation need not be rehandled except to ensure stability of the fill.

(E) A safety berm is constructed on the solid portion of the lower bench prior to gravity transport of the excess spoil. Where there is insufficient material on the lower bench to construct a safety berm, only that amount of spoil necessary for the construction of the berm may be gravity transported to the lower bench prior to construction of the berm. The safety berm must be removed by the operator by final grading operations;

(F) The area of the lower bench used to facilitate the disposal of excess spoil is considered a disturbed area.

(b) *Valley fills.* Valley fills shall meet all of the requirements of paragraph (a) of this section and the additional requirements of this section.

(1) The fill shall be designed to attain a long-term static safety factor of 1.5 based upon data obtained from subsurface exploration, geotechnical testing, foundation design, and accepted engineering analyses.

(2) A subdrainage system for the fill shall be constructed in accordance with the following:

(i) A system of underdrains constructed of durable rock shall meet the requirements of paragraph (2)(iv) of this section and:

(A) Be installated along the natural drainage system;

(B) Extend from the toe to the head of the fill; and

(C) Contain lateral drains to each area of potential drainage or seepage.

(ii) A filter system to insure the proper functioning of the rock underdrain system shall be designed and constructed using standard geotechnical engineering methods.

(iii) In constructing the underdrains, no more than 10 percent of the rock may be less than 12 inches in size and no single rock may be larger than 25 percent of the width of the drain. Rock used in underdrains shall meet the requirements of paragraph (2)(iv) of this section. The minimum size of the main underdrain shall be:

Total amount of fill material	Predominant type of fill material	Minimum size of drain, in feet	
		Width	Height
Less than 1,000,000 yd ^{3}	Sandstone	10	4
Do	Shale	16	8
More than 1,000,000 yd ^{3}.	Sandstone	16	8
Do	Shale	16	16

(iv) Underdrains shall consist of non-degradable, non-acid or toxic forming rock such as natural sand and gravel, sandstone, limestone, or other durable rock that will not slake in water and will be free of coal, clay or shale.

(3) Spoil shall be hauled or conveyed and placed in a controlled manner and concurrently compacted as specified by the regulatory authority, in lifts no greater than 4 feet or less if required by the regulatory authority to—

(i) Achieve the densities designed to ensure mass stability;

(ii) Prevent mass movement;

(iii) Avoid contamination of the rock underdrain or rock core; and

(iv) Prevent formation of voids.

(4) Surface water runoff from the area above the fill shall be diverted away from the fill and into stabilized diversion channels designed to pass safely the runoff from a 100-year, 24-hour precipitation event or larger event specified by the regulatory authority. Surface runoff from the fill surface shall be diverted to stabilized channels off the fill which will safely pass the runoff from a 100-year, 24-hour precipitation event. Diversion design shall comply with the requirements of § 715.17(c).

(5) The tops of the fill and any terrace constructed to stabilize the face shall be graded no steeper than 1*v*:20*h* (5 percent). The vertical distance be-

tween terraces shall not exceed 50 feet.

(6) Drainage shall not be directed over the outslope of the fill.

(7) The outslope of the fill shall not exceed 1*v*:2*h* (50 percent). The regulatory authority may require a flatter slope.

(c) *Head-of-hollow fills.* Disposal of spoil in the head-of-hollow fill shall meet all standards set forth in paragraphs (a) and (b) and the additional requirements of this section.

(1) The fill shall be designed to completely fill the disposal site to the approximate elevation of the ridgeline. A rock-core chimney drain may be utilized instead of the subdrain and surface diversion system required for valley fills. If the crest of the fill is not approximately at the same elevation as the low point of the adjacent ridgeline, the fill must be designed as specified in paragraph (b), with diversion of runoff around the fill. A fill associated with contour mining and placed at or near the coal seam, and which does not exceed 250,000 cubic yards may use the rock-core chimney drain.

(2) The alternative rock-core chimney drain system shall be designed and incorporated into the construction of head-of-hollow fills as follows:

(i) The fill shall have, along the vertical projection of the main buried stream channel or rill a vertical core of durable rock at least 16 feet thick which shall extend from the toe of the fill to the head of the fill, and from the base of the fill to the surface of the fill. A system of lateral rock underdrains shall connect this rock core to each area of potential drainage or seepage in the disposal area. Rocks used in the rock core and underdrains shall meet the requirements of paragraph (b)(2)(iv).

(ii) A filter system to ensure the proper functioning of the rock core shall be designed and constructed using standard geotechnical engineering methods.

(iii) The grading may drain surface water away from the outslope of the fill and toward the rock core. The maximum slope of the top of the fill shall be 1*v*:33*h* (3 percent). Instead of the requirements of paragraph (a)(7) of this section, a drainage pocket may be maintained at the head of the fill during and after construction, to intercept surface runoff and discharge the runoff through or over the rock drain, if stability of the fill is not impaired. In no case shall this pocket or sump have a potential for impounding more than 10,000 cubic feet of water. Terraces on the fill shall be graded with a 3- to 5-percent grade toward the fill and a 1-percent slope toward the rock core.

(3) The drainage control system shall be capable of passing safely the runoff from a 100-year, 24-hour precipitation event, or larger event specified by the regulatory authority.

(d) *Durable rock fills.* In lieu of the requirements of paragraphs (b) and (c) of this section the regulatory authority may approve alternate methods for disposal of hard rock spoil, including fill placement by dumping in a single lift, on a site specific basis, provided the services of a registered professional engineer experienced in the design and construction of earth and rockfill embankments are utilized and provided the requirements of this paragraph and paragraph (a) are met. For this section, hard rock spoil shall be defined as rockfill consisting of at least 80 percent by volume of sandstone, limestone, or other rocks that do not slake in water. Resistance of the hard rock spoil to slaking shall be determined by using the slake index and slake durability tests in accordance with guidelines and criteria established by the regulatory authority.

(1) Spoil is to be transported and placed in a specified and controlled manner which will ensure stability of the fill.

(i) The method of spoil placement shall be designed to ensure mass stability and prevent mass movement in accordance with the additional requirements of this section.

(ii) Loads of noncemented clay shale and/or clay spoil in the fill shall be mixed with hard rock spoil in a controlled manner to limit on a unit basis concentrations of noncemented clay shale and clay in the fill. Such materials shall comprise no more than 20 percent of the fill volume as determined by tests performed by a registered engineer and approved by the regulatory authority.

(2)(i) Stability analyses shall be made by the registered professional engineer. Parameters used in the stability analyses shall be based on adequate field reconnaissance, subsurface investigations, including borings, and laboratory tests.

(ii) The embankment which constitutes the valley fill or head-of-hollow fill shall be designed with the following factors of safety:

Case	Design condition	Minimum factor of safety
I	End of construction	1.5
II	Earthquake	1.1

(3) The design of a head-of-hollow fill shall include an internal drainage system which will ensure continued free drainage of anticipated seepage from precipitation and from springs or wet weather seeps.

(i) Anticipated discharge from springs and seeps and due to precipitation shall be based on records and/or field investigations to determine seasonal variation. The design of the internal drainage system shall be based on the maximum anticipated discharge.

(ii) All granular material used for the drainage system shall be free of clay and consist of durable particles such as natural sands and gravels, sandstone, limestone or other durable rock which will not slake in water.

(iii) The internal drain shall be protected by a properly designed filter system.

(4) Surface water runoff from the areas adjacent to and above the fill shall not be allowed to flow onto the fill and shall be diverted into stabilized channels which are designed to pass safely the runoff from a 100-year, 24-hour precipitation event. Diversion design shall comply with the requirements of § 715.17(c).

(5) The top surface of the completed fill shall be graded such that the final slope after settlement will be no steeper than 1*v*:20*h* (5 percent) toward properly designed drainage channels in natural ground along the periphery of the fill. Surface runoff from the top surface of the fill shall not be allowed to flow over the outslope of the fill.

(6) Surface runoff from the outslope of the fill shall be diverted off the fill to properly designed channels which will pass safely a 100-year, 24-hour precipitation event. Diversion design shall comply with the requirements of § 715.17(c).

(7) Terraces shall be constructed on the outslope if required for control of erosion or for roads included in the approved postmining land use plan. Terraces shall meet the following requirements:

(i) The slope of the outslope between terrace benches shall not exceed 1*v*:2*h* (50 percent.).

(ii) To control surface runoff, each terrace bench shall be graded to a slope of 1*v*:20*h* (5 percent) toward the embankment. Runoff shall be collected by a ditch along the intersection of each terrace bench and the outslope.

(iii) Terrace ditches shall have a 5-percent slope toward the channels specified in paragraph (d)(6) of this section, unless steeper slopes are necessary in conjunction with approved roads.

(e) *Preexisting benches.* (1) The regulatory authority may approve the disposal of excess spoil through placement on preexisting benches: *Provided,* That the standards set forth in paragraphs (a)(1)-(a)(5) and (a)(7)-(a)(14) of this section and the requirements of this paragraph (e) are met.

(2) All spoil shall be placed on the solid portion of the preexisting bench.

(3) The fill shall be designed, using standard geotechnical analysis, to attain a long-term static safety factor of 1.3 for all portions of the fill.

(4) The preexisting bench shall be backfilled and graded to—

(i) Achieve the most moderate slope possible which does not exceed the angle of repose, and

(ii) Eliminate the highwall to the extent practicable.

[44 FR 30628, May 25, 1979, as amended at 46 FR 37233, July 17, 1981; 47 FR 18555, Apr. 29, 1982]

§ 715.16 Topsoil handling.

To prevent topsoil from being contaminated by spoil or waste materials, the permittee shall remove the topsoil as a separate operation from areas to be disturbed. Topsoil shall be immediately redistributed according to the requirements of paragraph (b) of this section on areas graded to the approved postmining configuration. The topsoil shall be segregated, stockpiled, and protected from wind and water erosion and from contaminants which lessen its capability to support vegetation if sufficient graded areas are not immediately available for redistribution.

(a) *Topsoil removal.* All topsoil to be salvaged shall be removed before any drilling for blasting, mining, or other surface disturbance.

(1) All topsoil shall be removed unless use of alternative materials is approved by the regulatory authority in accordance with paragraph (a)(4) of this section. Where the removal of topsoil results in erosion that may cause air or water pollution, the regulatory authority shall limit the size of the area from which topsoil may be removed at any one time and specify methods of treatment to control erosion of exposed overburden.

(2) All of the A horizon of the topsoil as identified by soil surveys shall be removed according to paragraph (a) and then replaced on disturbed areas as the surface soil layers. Where the A horizon is less than 6 inches, a 6-inch layer that includes the A horizon and the unconsolidated material immediately below the A horizon (or all unconsolidated material if the total available is less than 6 inches) shall be removed and the mixture segregated and replaced as the surface soil layer.

(3) Where necessary to obtain soil productivity consistent with postmining land use, the regulatory authority may require that the B horizon or portions of the C horizon or other underlying layers demonstrated to have comparable quality for root development be segregated and replaced as subsoil.

(4) Selected overburden materials may be used instead of, or as a supplement to, topsoil where the resulting soil medium is equal to or more suitable for vegetation, and if all the following requirements are met:

(i) The permittee demonstrates that the selected overburden materials or an overburden-topsoil mixture is more suitable for restoring land capability and productivity by the results of chemical and physical analyses. These analyses shall include determinations of pH, percent organic material, nitrogen, phosphorus, potassium, texture class, and water-holding capacity, and such other analyses as required by the regulatory authority. The regulatory authority also may require that results of field-site trials or greenhouse tests be used to demonstrate the feasibility of using such overburden materials.

(ii) The chemical and physical analyses and the results of field-site trials and greenhouse tests are accompanied by a certification from a qualified soil scientist or agronomist.

(iii) The alternative material is removed, segregated, and replaced in conformance with this section.

(b) *Topsoil redistribution.* (1) After final grading and before the topsoil is replaced, regraded land shall be scarified or otherwise treated to eliminate slippage surfaces and to promote root penetration.

(2) Topsoil shall be redistributed in a manner that—

(i) Achieves an approximate uniform thickness consistent with the postmining land uses;

(ii) Prevents excess compaction of the spoil and topsoil; and

(iii) Protects the topsoil from wind and water erosion before it is seeded and planted.

(c) *Topsoil storage.* If the permit allows storage of topsoil, the stockpiled topsoil shall be placed on a stable area within the permit area where it will not be disturbed or be exposed to excessive water, wind erosion, or contaminants which lessen its capability to support vegetation before it can be redistributed on terrain graded to final contour. Stockpiles shall be selectively placed and protected from wind and water erosion, unnecessary compaction, and contamination by undesirable materials either by a vegetative cover as defined in § 715.20(g) or by other methods demonstrated to provide equal protection such as snow fences, chemical binders, and mulching. Unless approved by the regulatory authority, stockpiled topsoil shall not be moved until required for redistribution on a disturbed area.

(d) *Nutrients and soil amendments.* Nutrients and soil amendments in the amounts and analyses as determined by soil tests shall be applied to the surface soil layer so that it will support the postmining requirements of § 715.13 and the revegetation requirements of § 715.20.

§ 715.17 Protection of the hydrologic system.

The permittee shall plan and conduct coal mining and reclamation operations to minimize disturbance to the prevailing hydrologic balance in order to prevent long-term adverse changes in the hydrologic balance that could result from surface coal mining and reclamation operations, both on- and off-site. Changes in water quality and quantity, in the depth to ground water, and in the location of surface water drainage channels shall be minimized such that the postmining land use of the disturbed land is not adversely affected and applicable Federal and State statutes and regulations are not violated. The permittee shall conduct operations so as to minimize water pollution and shall, where necessary, use treatment methods to control water pollution. The permittee shall emphasize surface coal mining and reclamation practices that will prevent or minimize water pollution and changes in flows in preference to the use of water treatment facilities. Practices to control and minimize pollution include, but are not limited to, stabilizing disturbed areas through grading, diverting runoff, achieving quick growing stands of temporary vegetation, lining drainage channels with rock or vegetation, mulching, sealing acid-forming and toxic-forming materials, and selectively placing waste materials in backfill areas. If pollution can be controlled only by treatment, the permittee shall operate and maintain the necessary water-treatment facilities for as long as treatment is required.

(a) ***Water quality standards and effluent limitations.*** All surface drainage from the disturbed area, including disturbed areas that have been graded, seeded, or planted, shall be passed through a sedimentation pond or a series of sedimentation ponds before leaving the permit area. Sedimentation ponds shall be retained until drainage from the disturbed areas has met the water quality requirements of this section and the revegetation requirements of § 715.20 have been met. The regulatory authority may grant exemptions from this requirement only when the disturbed drainage area within the total disturbed area is small and if the permittee shows that sedimentation ponds are necessary to meet the effluent limitations of this paragraph and to maintain water quality in downstream receiving waters. For purpose of this section only, disturbed area shall not include those areas in which only diversion ditches, sedimentation ponds, or roads are installed in accordance with this section and the upstream area is not otherwise disturbed by the permittee. Sedimentation ponds required by this paragraph shall be constructed in accordance with paragraph (e) of this section in appropriate locations prior to any mining in the affected drainage area in order to control sedimentation or otherwise treat water in accordance with this paragraph. Discharges from areas disturbed by surface coal mining and reclamation operations must meet all applicable Federal and State laws and regulations and, at a minimum, the following numerical effluent limitations:

EFFLUENT LIMITATIONS, IN MILLIGRAMS PER LITER, MG/L, EXCEPT FOR PH

Effluent characteristics	Maximum allowable [1]	Average of daily values for 30 consecutive discharge days [1]
Iron, total	7.0	3.5
Manganese, total	4.0	2.0
Total suspended solids [2]	70.0	35.0
pH [3]	([4])	([4])

[1] Based on representative sampling.

[2] In Arizona, Colorado, Montana, New Mexico, North Dakota, South Dakota, Utah, and Wyoming, total suspended solids limitations will be determined on a case-by-case basis, but they must not be greater than 45 mg/l (maximum allowable) and 30 mg/l (average of daily value for 30 consecutive discharge days) based on a representative sampling.

[3] Where the application of neutralization and sedimentation treatment technology results in inability to comply with the manganese limitation set forth, the regulatory authority may allow the pH level in the discharge to exceed to a small extent the upper limit of 9.0 in order that the manganese limitations will be achieved.

[4] Within the range 6.0 to 9.0.

(1) Any overflow or other discharge of surface water from the disturbed area within the permit area demonstrated by the permittee to result from a precipitation event larger than a 10-year, 24-hours frequency event will not be subject to the effluent limitations of paragraph (a).

(2) The permittee shall install, operate, and maintain adequate facilities to treat any water discharged from the disturbed area that violates applicable federal or State laws or regulations or the limitations of paragraph (a). If the pH of waters to be discharged from the disturbed area is normally less than 6.0, an automatic line feeder or other neutralization process approved by the regulatory authority shall be installed operated, and maintained. If, the regulatory authority finds (i) that small and infrequent treatment requirements to meet applicable standards do not necessitate use of an automatic neutralization process, and (ii) that the mine normally produces less than 500 tons of coal per day, then the regulatory authority may approve the use of a manual system if the permittee ensures consistent and timely treatment.

(3) The effluent limitations for manganese shall be applicable only to acid drainage.

(b) *Surface-water monitoring.* (1) The permittee shall submit for approval by the regulatory authority a surface-water monitoring program which meets the following requirements:

(i) Provides adequate monitoring of all discharge from the disturbed area.

(ii) Provides adequate data to describe the likely daily and seasonal variation in discharges from the disturbed area in terms of water flow, pH, total iron, total managanese, and total suspended solids and, if requested by the regulatory authority, any other parameter characteristic of the discharge.

(iii) Provides monitoring at appropriate frequencies to measure normal and abnormal variations in concentrations.

(iv) Provides an analytical quality control system including standard methods of analysis such as those specified in 40 CFR 136.

(v) Within sixty (60) days of the end of each sixty (60) day sample collection period, a report of all samples shall be made to the regulatory authority, unless the discharge for which water monitoring reports are required is subject to regulation by a National Pollution Discharge Elimination System (NPDES) permit issued in compliance with the Clean Water Act of 1977 (33 U.S.C. 1251-1378), (A) which includes equivalent reporting requirements, and (B) which requires filing of the water monitoring report within 90 days or less of sample collection. For such discharges, the reporting requirements of this paragraph may be satisfied by submitting to the regulatory authority on the same time schedule as required by the NPDES permit or within ninety (90) days following sample collection, whichever is earlier, either (*1*) a copy of the completed reporting form filed to meet the NPDES permit requirements, or (*2*) a letter identifying the State or Federal government official with whom the reporting form was filed to meet the NPDES permit requirements and the date of filing. In all cases in which analytical results of the sample collections indicate a violation of a permit condition or applicable standard has occurred, the operator shall notify the regulatory authority immediately. Where an NPDES permit effluent limitation requirement has been violated, the permittee should forward a copy of the Discharge Monitoring Report, EPA Form 3320-1, concurrently with notification of the violation.

(2) After disturbed areas have been regraded and stabilized in accordance with this part, the permittee shall monitor surface water flow and quality. Data from this monitoring shall be used to demonstrate that the quality and quantity of runoff without treatment will be consistent with the requirement of this section to minimize disturbance to the prevailing hydrologic balance and with the requirements of this part to attain the approved postmining land use. These

data shall provide a basis for approval by the regulatory authority for removal of water quality or flow control systems and for determining when the requirements of this section are met. The regulatory authority shall determine the nature of data, frequency of collection, and reporting requirements.

(3) Equipment, structures, and other measures necessary to accurately measure and sample the quality and quantity of surface water discharges from the disturbed area of the permit area shall be properly installed, maintained, and operated and shall be removed when no longer required.

(c) *Diversion and conveyance of overland flow away from disturbed areas.* In order to minimize erosion and to prevent or remove water from contacting toxic-producing deposits, overland flow from undisturbed areas may, if required or approved by the regulatory authority, be diverted away from disturbed areas by means of temporary or permanent diversion structures. The following requirements shall be met:

(1) Temporary diversion structures shall be constructed to safely pass the peak runoff from a precipitation event with a one year recurrence interval, or a larger event as specified by the regulatory authority. The design criteria must assure adequate protection of the environment and public during the existence of the temporary diversion structure.

(2) Permanent diversion structures are those remaining after mining and reclamation and approved for retention by the regulatory authority and other appropriate State and Federal agencies. To protect fills and property and to avoid danger to public health and safety, permanent diversion structures shall be constructed to safely pass the peak runoff from a precipitation event with a 100-year recurrence interval, or a larger event as specified by the regulatory authority. Permanent diversion structures shall be constructed with gently sloping banks that are stabilized by vegetation. Asphalt, concrete, or other similar linings shall not be used unless specifically required to prevent seepage or to provide stability and are approved by the regulatory authority.

(3) Diversions shall be designed, constructed, and maintained in a manner to prevent additional contributions of suspended solids to streamflow or to runoff outside the permit area to the extent possible, using the best technology currently available. In no event shall such contributions be in excess of requirements set by applicable State or Federal law. Appropriate sediment control measures for these diversions shall include, but not be limited to, maintenances of appropriate gradients, channel lining, revegetation, roughness structures, and detention basins.

(d) *Stream channel diversions.* (1) Flow from perennial and intermittent streams within the permit area may be diverted only when the diversions are approved by the regulatory authority and they are in compliance with local, State, and Federal statutes and regulations. When streamflow is allowed to be diverted, the new stream channel shall be designed and constructed to meet the following requirements:

(i) The average stream gradient shall be maintained and the channel designed, constructed, and maintained to remain stable and to prevent additional contributions of suspended solids to streamflow, or to runoff outside the permit area to the extent possible, using the best technology currently available. In no event shall such contributions be in excess of requirements set by applicable State or Federal law. Erosion control structures such as channel lining structures, retention basins, and artificial channel roughness structures shall be used only when approved by the regulatory agency for temporary diversions where necessary or for permanent diversions where they are stable and will require only infrequent maintenance.

(ii) Channel, bank, and flood-plain configurations shall be adequate to safely pass the peak runoff of a precipitation event with a 10-year recurrence interval for temporary diversions and a 100-year recurrence interval for permanent diversions, or larger events as specified by the regulatory authority.

(iii) Fish and wildlife habitat and water and vegetation of significant value for wildlife shall be protected in consultation with appropriate State and Federal fish and wildlife management agencies.

(2) All temporary diversion structures shall be removed and the affected land regraded and revegetated consistent with the requirements of §§ 715.14 and 715.20. At the time such diversions are removed, the permittee shall ensure that downstream water treatment facilities previously protected by the diversion are modified or removed to prevent overtopping or failure of the facilities.

(3) *Buffer zone.* No land within 100 feet of an intermittent or perennial stream shall be disturbed by surface coal mining and reclamation operations unless the regulatory authority specifically authorizes surface coal mining and reclamation operations through such a stream. The area not to be disturbed shall be designated a buffer zone and marked as specified in § 715.12.

(e) *Sedimentation ponds*—(1) *General requirements.* Sedimentation ponds shall be used individually or in series and shall—

(i) Be constructed before any disturbance of the undisturbed area to be drained into the pond;

(ii) Be located as near as possible to the disturbed area and out of perennial streams; unless approved by the regulatory authority;

(iii) Meet all the criteria of this section.

(2) *Sediment storage volume.* Sedimentation ponds shall provide a minimum sediment storage volume.

(3) *Detention time.* Sedimentation ponds shall provide the required theoretical detention time for the water inflow or runoff entering the pond from a 10-year, 24-hour precipitation event (design event).

(4) *Dewatering.* The water storage resulting from inflow shall be removed by a nonclogging dewatering device or a conduit spillway approved by the regulatory authority. The dewatering device shall not be located at a lower elevation than the maximum elevation of the sedimentation storage volume.

(5) Each person who conducts surface mining activities shall design, construct, and maintain sedimentation ponds to prevent short-circuiting to the extent possible.

(6) The design, construction, and maintenance of a sedimentation pond or other sediment control measures in accordance with this section shall not relieve the person from compliance with applicable effluent limitations as contained in paragraph (a) of this section.

(7) There shall be no out-flow through the emergency spillway during the passage of the runoff resulting from the 10-year, 24-hour precipitation event or lesser events through the sedimentation pond.

(8) Sediment shall be removed from sedimentation ponds.

(9) An appropriate combination of principal and emergency spillways shall be provided to safely discharge the runoff from a 25-year, 24-hour precipitation event, or larger event specified by the regulatory authority. The elevation of the crest of the emergency spillway shall be a minimum of 1.0 foot above the crest of the principal spillway. Emergency spillway grades and allowable velocities shall be approved by the regulatory authority.

(10) The minimum elevation at the top of the settled embankment shall be 1.0 foot above the water surface in the pond with the emergency spillway flowing at design depth. For embankments subject to settlement, this 1.0 foot minimum elevation requirement shall apply at all times, including the period after settlement.

(11) The constructed height of the dam shall be increased a minimum of 5 percent over the design height to allow for settlement, unless it has been demonstrated to the regulatory authority that the material used and the design will ensure against all settlement.

(12) The minimum top width of the embankment shall not be less than the quotient of $(H+35)/5$, where H is the height, in feet, of the embankment as measured from the upstream toe of the embankment.

(13) The combined upstream and downstream side slopes of the settled embankment shall not be less than $1v{:}5h$, with neither slope steeper than $1v{:}2h$. Slopes shall be designed to be

stable in all cases, even if flatter side slopes are required.

(14) The embankment foundation areas shall be cleared of all organic matter, all surfaces sloped to no steeper than 1*v*:1*h*, and the entire foundation surface scarified.

(15) The fill material shall be free of sod, large roots, other large vegetative matter, and frozen soil, and in on case shall coal-processing waste be used.

(16) The placing and spreading of fill material shall be started at the lowest point of the foundation. The fill shall be brought up in horizontal layers of such thickness as is required to facilitate compaction and meet the design requirements of this section. Compaction shall be conducted as specified in the design approved by the regulatory authority.

(17) If a sedimentation pond has an embankment that is more than 20 feet in height, as measured from the upstream toe of the embankment to the crest of the emergency spillway, or has a storage volume of 20 acre-feet or more, the following additional requirements shall be met:

(i) An appropriate combination of principal and emergency spillways shall be provided to discharge safely the runoff resulting from a 100-year, 24-hour precipitation event, or a larger event specified by the regulatory authority.

(ii) The embankment shall be designed and constructed with a static safety factor of at least 1.5, or a higher safety factor as designated by the regulatory authority to ensure stability.

(iii) Appropriate barriers shall be provided to control seepage along conduits that extend through the embankment.

(iv) The criteria of the Mine Safety and Health Administration as published in 30 CFR 77.216 shall be met.

(18) Each pond shall be designed and inspected during construction under the supervision of, and certified after construction by, a registered professional engineer.

(19) The entire embankment including the surrounding areas disturbed by construction shall be stabilized with respect to erosion by a vegetative cover or other means immediately after the embankment is completed. The active upstream face of the embankment where water will be impounded may be riprapped or otherwise stabilized. Areas in which the vegetation is not successful or where rills and gullies develop shall be repaired and revegetated in accordance with § 715.20.

(20) All ponds, including those not meeting the size or other criteria of 30 CFR 77.216(a), shall be examined for structural weakness, erosion, and other hazardous conditions, and reports and modifications shall be made to the regulatory authority, in accordance with 30 CFR 77.216-3. With the approval of the regulatory authority, dams not meeting these criteria (30 CFR 77.216(a)) shall be examined four times per year.

(21) Sedimentation ponds shall not be removed until the disturbed area has been restored, and the vegetation requirements of § 715.20 are met and the drainage entering the pond has met the applicable State and Federal water quality requirements for the receiving stream. When the sedimentation pond is removed, the affected land shall be regraded and revegetated in accordance with §§ 715.14, 715.16, and 715.20, unless the pond has been approved by the regulatory authority for retention as being compatible with the approved postmining land use. If the regulatory authority approves retention, the sedimentation pond shall meet all the requirements for permanent impoundments of paragraph (k) of this section.

(22)(i) Where surface mining activities are proposed to be conducted on steep slopes, as defined in § 716.2 of this chapter, special sediment control measures may be followed if the person has demonstrated to the regulatory authority that a sedimentation pond (or series of ponds) constructed according to paragraph (e) of this section—

(A) Will jeopardize public health and safety; or

(B) Will result in contributions of suspended solids to streamflow in excess of the incremental sediment volume trapped by the additional pond size required.

(ii) Special sediment control measures shall include but not be limited to—

(A) Designing, constructing, and maintaining a sedimentation pond as near as physically possible to the disturbed area which complies with the design criteria of this section to the maximum extent possible.

(B) A plan and commitment to employ sufficient onsite sedimentation control measures including bench sediment storage, filtration by natural vegetation, mulching, and prompt revegetation which, in conjunction with the required sediment pond, will achieve and maintain applicable effluent limitations. The plan submitted pursuant to this paragraph shall include a detailed description of all onsite control measures to be employed, a quantitative analysis demonstrating that onsite sedimentation control measures, in conjunction with the required sedimentation pond, will achieve and maintain applicable effluent limitations, and maps depicting the location of all onsite sedimentation control measures.

(f) *Discharge structures.* Discharges from sedimentation ponds and diversions shall be controlled, where necessary, using energy dissipators, surge ponds, and other devices to reduce erosion and prevent deepening or enlargement of stream channels and to minimize disturbances to the hydrologic balance.

(g) *Acid and toxic materials.* Drainage from acid-forming and toxic-forming mine waste materials and soils into ground and surface water shall be avoided by—

(1) Identifying, burying, and treating where necessary, spoil or other materials that, in the judgment of the regulatory authority, will be toxic to vegetation or that will adversely affect water quality if not treated or buried. Such material shall be disposed of in accordance with the provision of § 715.14(j);

(2) Preventing or removing water from contact with toxic-producing deposits;

(3) Burying or otherwise treating all toxic or harmful materials within 30 days, if such materials are subject to wind and water erosion, or within a lesser period designated by the regulatory authority. If storage of such materials is approved, the materials shall be placed on impermeable material and protected from erosion and contact with surface water. Coal waste ponds and other coal waste materials shall be maintained according to paragraph (g)(4) of this section, and § 715.18 shall apply;

(4) Burying or otherwise treating waste materials from coal preparation plants no later than 90 days after the cessation of the filling of the disposal area. Burial or treatment shall be in accordance with § 715.14(j);

(5) Casing, sealing or otherwise managing boreholes, shafts, wells, and auger holes or other more or less horizontal holes to prevent pollution of surface or ground water and to prevent mixing of ground waters of significantly different quality. All boreholes that are within the permit area but are outside the surface coal mining area or which extend beneath the coal to be mined and into water bearing strata shall be plugged permanently in a manner approved by the regulatory authority, unless the boreholes have been approved for use in monitoring;

(6) Taking such other actions as required by the regulatory authority.

(h) *Ground water*—(1) *Recharge capacity of reclaimed lands.* The disturbed area shall be reclaimed to restore approximate premining recharge capacity through restoration of the capability of the reclaimed areas as a whole to transmit water to the ground water system. The recharge capacity should be restored to support the approved postmining land use and to minimize disturbances to the prevailing hydrologic balance at the mined area and in associated offsite areas. The permittee shall be responsible for monitoring according to paragraph (h)(3) of this section to ensure operations conform to this requirement.

(2) *Ground water systems.* Backfilled materials shall be placed to minimize adverse effects on ground water flow and quality, to minimize offsite effects, and to support the approved postmining land use. The permittee shall be responsible for performing monitoring according to paragraph

(h)(3) of this section to ensure operations conform to this requirement.

(3) *Monitoring.* Ground water levels, infiltration rates, subsurface flow and storage characteristics, and the quality of ground water shall be monitored in a manner approved by the regulatory authority to determine the effects of surface coal mining and reclamation operations on the recharge capacity of reclaimed lands and on the quantity and quality of water in ground water systems at the mine area and in associated offsite areas. When operations are conducted in such a manner that may affect the ground water system, ground water levels and ground water quality shall be periodically monitored using wells that can adequately reflect changes in ground water quantity and quality resulting from such operations. Sufficient water wells must be used by the permittee. The regulatory authority may require drilling and development of additional wells if needed to adequately monitor the ground water system. As specified and approved by the regulatory authority, additional hydrologic tests, such as infiltration tests and aquifer tests, must be undertaken by the permittee to demonstrate compliance with paragraph (h) (1) and (2) of this section.

(i) *Water rights and replacement.* The permittee shall replace the water supply of an owner of interest in real property who obtains all or part of his supply of water for domestic, agricultural, industrial, or other legitimate use from an underground or surface source where such supply has been affected by contamination, diminution, or interruption proximately resulting from surface coal mine operation by the permittee.

(j) *Alluvial valley floors west of the 100th meridian west longitude.* (1) Surface coal mining operations conducted in or adjacent to alluvial valley floors shall be planned and conducted so as to preserve the essential hydrologic functions of these alluvial valley floors throughout the mining and reclamation process. These functions shall be preserved by maintaining or reestablishing those hydrologic and biologic characteristics of the alluvial valley floor that are necessary to support the functions. The permittee shall provide information to the regulatory authority as required in paragraph (j)(3) of this section to allow identification of essential hydrologic functions and demonstrate that the functions will be preserved. The characteristics of an alluvial valley floor to be considered include, but are not limited to—

(i) The longitudinal profile (gradient), cross-sectional shape, and other channel characteristics of streams that have formed within the alluvial valley floor and that provide for maintenance of the prevailing conditions of surface flow;

(ii) Aquifers (including capillary zones and perched water zones) and confining beds within the mined area which provide for storage, transmission, and regulation of natural ground water and surface water that supply the alluvial valley floors;

(iii) Quantity and quality of surface and ground water that supply alluvial valley floors;

(iv) Depth to and seasonal fluctuations of ground water beneath alluvial valley floors;

(v) Configuration and stability of the land surface in the flood plain and adjacent low terraces in alluvial valley floors as they allow or facilitate irrigation with flood waters or subirrigation and maintain erosional equilibrium; and

(vi) Moisture-holding capacity of soils (or plant growth medium) within the alluvial valley floors, and physical and chemical characteristics of the subsoil which provide for sustained vegetation growth or cover through dry months.

(2) Surface coal mining operations located west of the 100th meridian west longitude shall not interrupt, discontinue, or preclude farming on alluvial valley floors and shall not materially damage the quantity or quality of surface or ground water that supplies these valley floors unless the premining land use has been undeveloped rangeland which is not significant to farming on the alluvial valley floors or unless the area of affected alluvial valley floor is small and provides negligible support for the production from one or more farms. This paragraph

(j)(2) does not apply to those surface coal mining operations that—

(i) Were in production in the year preceding August 3, 1977, were located in or adjacent to an alluvial valley floor, and produced coal in commercial quantities during the year preceding August 3, 1977; or

(ii) Had specific permit approval by the State regulatory authority before August 3, 1977, to conduct surface coal mining operations for an area within an alluvial valley floor.

(3)(i) Before surface mining and reclamation operations authorized under paragraph (j)(2) of this section may be issued a new revised or amended permit, the permittee shall submit, for regulatory authority approval, detailed surveys and baseline data to establish standards against which the requirements of paragraph (j)(1) of this section may be measured and from which the degree of material damage to the quantity and quality of surface and ground water that supply the alluvial valley floors may be assessed. The surveys and date shall include—

(A) A map at a scale determined by the regulatory authority, showing the location and configuration of the alluvial valley floor;

(B) Baseline data covering a full water year for each of the hydrologic functions identified in paragraph (j)(1) of this section;

(C) Plans showing how the operation will avoid, during mining and reclamation, interruption, discontinuance, or preclusion of farming on the alluvial valley floors and will not materially damage the quantity or quality of water in surface and ground water systems that supply such valley floors;

(D) Historic land use data for the proposed permit area and for farms to be affected; and

(E) Such other data as the regulatory authority may require.

(ii) Surface mining operations which qualify for the exceptions in paragraph (j)(2) of this section are not required to submit the plans prescribed in paragraph (j)(3)(i)(C) of this section.

(4) The holder of a Federal coal lease or the fee holder of any coal deposit located within or adjacent to an alluvial valley floor west of the 100th meridian west from which coal was not produced in commercial quantities between August 3, 1976, and August 3, 1977, and for which no specific permit by the appropriate State or Federal regulatory authority to conduct surface coal mining operations in the alluvial valley floors has been obtained, may be entitled to an exchange of the Federal coal lease for a lease of other Federal coal deposits under section 510(b)(5) of the Act, or to the conveyance by the Secretary of fee title to other available Federal coal deposits in exchange for the fee title to such deposits under section 206 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2743), if the Secretary determines that substantial financial and legal commitments were made by the operator prior to January 1, 1977, in connection with surface coal mining operations on such lands.

(k) *Permanent impoundments.* The permittee may construct, if authorized by the regulatory agency pursuant to this paragraph and § 715.13, permanent water impoundments on mining sites as a part of reclamation activities only when they are adequately demonstrated to be incompliance with §§ 715.13 and 715.14 in addition to the following requirements:

(1) The size of the impoundment is adequate for its intended purposes.

(2) The impoundment dam construction is designed to achieve necessary stability with an adequate margin of safety compatible with that of structures constructed under Pub. L. 83-566 (16 U.S.C. 1006).

(3) The quality of the impounded water will be suitable on a permanent basis for its intended use and discharges from the impoundment will not degrade the quality of receiving waters below the water quality standards established pursuant to applicable Federal and State law.

(4) The level of water will be reasonably stable.

(5) Final grading will comply with the provisions of § 715.14 and will provide adequate safety and access for proposed water users.

(6) Water impoundments will not result in the diminution of the quality or quantity of water used by adjacent or surrounding landowners for agricul-

tural, industrial, recreational, or domestic uses.

(l) *Hydrologic impact of roads.* (1) *General.* Access and haul roads and associated bridges, culverts, ditches, and road rights-of-way shall be constructed, maintained, and reclaimed to prevent additional contributions of suspended solids to streamflow, or to runoff outside the permit area to the extent possible, using the best technology currently available. In no event shall the contributions be in excess of requirements set by applicable State or Federal law. All access and haul roads shall be removed and the land affected regraded and revegetated consistent with the requirements of §§ 715.14 and 715.20, unless retention of a road is approved as part of a postmining land use under § 715.13 as being nessary to support the postmining land use or necessary to adequately control erosion and the necessary maintenance is assured.

(2) *Construction.* (i) All roads, insofar as possible, shall be located on ridges or on the available flatter and more stable slopes to minimize erosion. Stream fords are prohibited unless they are specifically approved by the regulatory authority as temporary routes across dry streams that will not adversely affect sedimentation and that will not be used for coal haulage. Other stream crossings shall be made using bridges, culverts or other structures designed and constructed to meet the requirements of this paragraph. Roads shall not be located in active stream channels nor shall they be constructed or maintained in a manner that increases erosion or causes significant sedimentation or flooding. However, nothing in this paragraph will be construed to prohibit relocation of stream channels in accordance with paragraph (d) of this section.

(ii) In order to minimize erosion and subsequent disturbances of the hydrologic balance, roads shall be constructed in compliance with the following grade restrictions or other grades determined by the regulatory authority to be necessary to control erosion:

(A) The overall sustained grade shall not exceed 1*v*:10*h* (10 percent).

(B) The maximum grade greater than 10 percent shall not exceed 1*v*:6.5*h* (15 percent) for more than 300 feet.

(C) There shall not be more than 300 feet of grade exceeding 10 percent within each 1,000 feet.

(iii) All access and haul roads shall be adequately drained using structures such as, but not limited to, ditches, water barriers, cross drains, and ditch relief drains. For access and haul roads that are to be maintained for more than 1 year, water-control structures shall be designed with a discharge capacity capable of passing the peak runoff from a 10-year, 24-hour precipitation event. Drainage pipes and culverts shall be constructed to avoid plugging or collapse and erosion at inlets and outlets. Drainage ditches shall be provided at the toe of all cut slopes formed by construction of roads. Trash racks and debris basins shall be installed in the drainage ditches wherever debris from the drainage area could impair the functions of drainage and sediment control structures. Ditch relief and cross drains shall be spaced according to grade. Effluent limitations of paragraph (a) of this section shall not apply to drainage from access and hauls roads located outside the disturbed area as defined in this section unless otherwise specified by the regulatory authority.

(iv) Access and haul roads shall be surfaced with durable material. Toxic- or acid-forming substances shall not be used. Vegetation may be cleared only for the essential width necessary for road and associated ditch construction and to serve traffic needs.

(3) *Maintenance.* (i) Access and haul roads shall be routinely maintained by means such as, but not limited to, wetting, scraping or surfacing.

(ii) Ditches, culverts, drains, trash racks, debris basins and other structures serving to drain access and haul roads shall not be restricted or blocked in any manner that impedes drainage or adversely affects the intended purpose of the structure.

(m) *Hydrologic impacts of other transport facilities.* Railroad loops, spurs, sidings and other transport facilities shall be constructed, maintained and reclaimed to control diminution or degradation of water quality and quantity and to prevent additional contributions of suspended solids to streamflow, or to run-off outside the permit area to the extent possible, using the best technology currently available. In no event shall contributions be in excess of requirements set by applicable State or Federal law.

(n) *Discharge of waters into underground mines.* Surface and ground waters shall not be discharged or diverted into underground mine workings.

(Secs. 101, 102, 201, 501, 503-510, 515-517, 523, and 701, *Surface Mining Act of 1977,* Pub. L. 95-87), 30 U.S.C. 1201, 1202, 1211, 1251-1260, 1265-1267, 1273, 1291))

[42 FR 62680, Dec. 13, 1977; 43 FR 2721, Jan. 19, 1978; 43 FR 3705, Jan. 27, 1978, as amended at 43 FR 8091, Feb. 27, 1978; 43 FR 21458, May 18, 1978; 44 FR 30621, May 25, 1979; 44 FR 36887, *June* 22, 1979; 44 FR 77451, Dec. 31, 1979; 45 FR 6913, Jan. 30, 1980]

EDITORIAL NOTE: A document published at 44 FR 77451, Dec. 31, 1979 temporarily suspended § 715.17(a)(1) insofar as it applies to total suspended solids (TSS) discharges.

§ 715.18 Dams constructed of or impounding waste material.

(a) *General.* No waste material shall be used in or impounded by existing or new dams without the approval of the regulatory authority. The permittee shall design, locate, construct, operate, maintain, modify, and abandon or remove all dams (used either temporarily or permanently) constructed of waste materials, in accordance with the requirements of this section.

(b) *Construction of dams.* (1) Waste shall not be used in the construction of dams unless demonstrated through appropriate engineering analysis, to have no adverse effect on stability.

(2) Plans for dams subject to this section, and also including those dams that do not meet the size or other criteria of § 77.216(a) of this title, shall be approved by the regulatory authority before construction and shall contain the minimum plan requirements established by the Mining Enforcement and Safety Administration pursuant to § 77.216-2 of this title.

(3) Construction requirements are as follows:

(i) Design shall be based on the flood from the probable maximum precipitation event unless the permittee shows that the failure of the impounding structure would not cause loss of life or severely damage property or the environment, in which case depending on site conditions, a design based on a precipitation event of no less than 100-year frequency may be approved by the regulatory authority.

(ii) The design freeboard distance between the lowest point on the embankment crest and the maximum water elevation shall be at least 3 feet to avoid overtopping by wind and wave action.

(iii) Dams shall have minimum safety factors as follows:

Case	Loading condition	Minimum safety factor
I	End of construction	1.3
II	Partial pool with steady seepage saturation	1.5
III	Steady seepage from spillway or decant crest	1.5
IV	Earthquake (cases II and III with seismic loading)	1.0

(iv) The dam, foundation, and abutments shall be stable under all conditions of construction and operation of the impoundment. Sufficient foundation investigations and laboratory testing shall be performed to determine the factors of safety of the dam for all loading conditions in paragraph (b)(3)(iii) of this section and for all increments of construction.

(v) Seepage through the dam, foundation, and abutments shall be controlled to prevent excessive uplift pressures, internal erosion, sloughing, removal of material by solution, or erosion of material by loss into cracks, joints, and cavities. This may require the use of impervious blankets, pervious drainage zones or blankets, toe drains, relief wells, or dental concreting of jointed rock surface in contact with embankment materials.

(vi) Allowances shall be made for settlement of the dams and the foundation so that the freeboard will be maintained.

(vii) Impoundments created by dams of waste materials shall be subject to a minimum drawdown criteria that allows the facility to be evacuated by spillways or decants of 90 percent of the volume of water stored during the design precipitation event within 10 days.

(viii) During construction of dams subject to this section, the structures shall be periodically inspected by a registered professional engineer to ensure construction according to the approved design. On completion of construction, the structure shall be certified by a registered professional engineer experienced in the field of dam construction as having been constructed in accordance with accepted professional practice and the approved design.

(ix) A permanent identification marker, at least 6 feet high that shows the dam number assigned pursuant to § 77.216-1 of this title and the name of the person operating or controlling the dam, shall be located on or immediately adjacent to each dam within 30 days of certification of design pursuant to this section.

(4) All dams, including those not meeting the size or other criteria of § 77.216 (a) of this title, shall be routinely inspected by a registered professional engineer, or someone under the supervision of a registered professional engineer, in accordance with Mining Enforcement and Safety Administration regulations pursuant to § 77.216-3 of this title.

(5) All dams shall be routinely maintained. Vegetative growth shall be cut where necessary to facilitate inspection and repairs. Ditches and spillways shall be cleaned. Any combustible materials present on the surface, other than that used for surface stability such as mulch or dry vegetation, shall be removed and any other appropriate maintenance procedures followed.

(6) All dams subject to this section shall be certified annually as having been constructed and modified in accordance with current prudent engineering practices to minimize the possibility of failures, Any changes in the geometry of the impounding structure shall be highlighted and included in the annual certification report. These certifications shall include a report on existing and required monitoring procedures and instrumentation, the average and maximum depths and elevations of any impounded waters over the past year, existing storage capacity of impounding structures, any fires occurring in the material over the past year and any other aspects of the structures affecting their stability.

(7) Any enlargements, reductions in size, reconstruction or other modification of the dams shall be approved by the regulatory authority before construction begins.

(8) All dams shall be removed and the disturbed areas regraded, revegetated, and stabilized before the release of bond unless the regulatory authority approves retention of such dams as being compatible with an approved postmining land use (§ 715.13).

§ 715.19 Use of explosives.

(a) *General.* (1) The permittee shall comply with all applicable local, State, and Federal laws and regulations and the requirements of this section in the storage, handling, preparation, and use of explosives.

(2) Blasting operations that use more than the equivalent of 5 pounds of TNT shall be conducted according to a time schedule approved by the regulatory authority.

(3) All blasting operations shall be conducted by experienced, trained, and competent persons who understand the hazards involved. Persons working with explosive materials shall—

(i) Have demonstrated a knowledge of, and a willingness to comply with, safety and security requirements;

(ii) Be capable of using mature judgment in all situations;

(iii) Be in good physical condition and not addicted to intoxicants, narcotics, or other similar types of drugs;

(iv) Possess current knowledge of the local, State and Federal laws and regulations applicable to his work; and

(v) Have obtained a certificate of completion of training and qualification as required by State law or the regulatory authority.

(b) *Preblasting survey.* (1) On the request to the regulatory authority of a resident or owner of a manmade dwelling or structure that is located within one-half mile of any part of the permit area, the permittee shall conduct a preblasting survey of the dwelling or structure and submit a report of the survey to the regulatory authority.

(2) Personnel approved by the regulatory authority shall conduct the survey to determine the condition of the dwelling or structure and to document any preblasting damage and other physical factors that could reasonably be affected by the blasting. Assessments of structures such as pipes, cables, transmission lines, and wells and other water systems shall be limited to surface condition and other readily available data. Special attention shall be given to the preblasting condition of wells and other water systems used for human, animal, or agricultural purposes and to the quantity and quality of the water.

(3) A written report of the survey shall be prepared and signed by the person or persons who conducted the survey and prepared the written report. The report shall include recommendations of any special conditions or proposed adjustments to the blasting procedures outlined in paragraph (e) of this section which should be incorporated into the blasting plan to prevent damage. Copies of the report shall be provided to the person requesting the survey and to the regulatory authority.

(c) *Public notice of blasting schedule.* At least 10 days, but not more than 20 days before beginning a blasting program in which explosives that use more than the equivalent of 5 pounds of TNT are detonated, the permittee shall publish a blasting schedule in a newspaper of general circulation in the locality of the proposed site. Copies of the schedule shall be distributed by mail to local governments and public utilities and to each residence within one-half mile of the blasting sites described in the schedule. The permittee shall republish and redistribute the schedule by mail at least every 3 months. Blasting schedules shall not be so general as to cover all working hours but shall identify as accurately as possible the location of the blasting sites and the time periods when blasting will occur. The blasting schedule shall contain at a minimum—

(1) Identification of the specific areas in which blasting will take place. The specific blasting areas described shall not be larger than 300 acres with a generally contiguous border;

(2) Dates and times when explosives are to be detonated expressed in not more than 4-hour increments;

(3) Methods to be used to control access to the blasting area;

(4) Types of audible warnings and all-clear signals to be used before and after blasting; and

(5) A description of possible emergency situations (defined in paragraph (e)(1)(ii) of this section), which have been approved by the regulatory authority, when it may be necessary to blast at times other than those described in the schedule.

(d) *Public notice of changes to blasting schedules.* Before blasting in areas not covered by a previous schedule or whenever the proposed frequency of individual detonations are materially changed, the permittee shall prepare a revised blasting schedule in accordance with the procedures in paragraph (c) of this section. If the change involves only a temporary adjustment of the frequency of blasts, the permittee may use alternate methods to notify the governmental bodies and individuals to whom the original schedule was sent.

(e) *Blasting procedures*—(1) *General.* (i) All blasting shall be conducted only during the daytime hours, defined as sunrise until sunset. Based on public requests or other considerations, including the proximity to residential areas, the regulatory authority may specify more restrictive time periods.

(ii) Blasting may not be conducted at times different from those announced in the blasting schedule except in emergency situations where rain, lightning, other atmospheric conditions, or operator or public safety requires unscheduled detonation.

(iii) Warning and all-clear signals of different character that are audible within a range of one-half mile from the point of the blast shall be given. All persons within the permit area shall be notified of the meaning of the signals through appropriate instructions and signs posted as required by § 715.12.

(iv) Access to the blasting area shall be regulated to protect the public and livestock from the effects of blasting. Access to the blasting area shall be controlled to prevent unauthorized entry at least 10 minutes before each blast and until the permittee's authorized representative has determined that no unusual circumstances such as imminent slides or undetonated charges exist and access to and travel in or through the area can safely resume.

(v) Areas in which charged holes are awaiting firing shall be guarded, barricaded and posted, or flagged against unauthorized entry.

(vi) Airblast shall be controlled such that it does not exceed 128 decibel linear-peak at any manmade dwelling or structure located within one-half mile of the permit area.

(vii) Except where lesser distances are approved by the regulatory authority (based upon a preblasting survey or other appropriate investigations) blasting shall not be conducted within—

(A) 1,000 feet of any building used as a dwelling, school, church, hospital, or nursing facility;

(B) 500 feet of facilities including, but not limited to, disposal wells, petroleum or gas-storage facilities, municipal water-storage facilities, fluid-transmission pipelines, gas or oil-collection lines, or water and sewage lines; and

(C) 500 feet of an underground mine not totally abandoned except with the concurrence of the Mining Enforcement and Safety Administration.

(2) *Blasting standards.* (i) Blasting shall be conducted to prevent injury to persons, damage to public or private property outside the permit area, adverse impacts on any underground mine, and change in the course, channel, or availability of ground or surface waters outside the permit area.

(ii) *Ground vibration*—(A) *General.* In all blasting operations, except as otherwise authorized in paragraph (e)(2)(iii) of this section, the maximum ground vibration shall not exceed a value approved by the regulatory authority. It shall be established in accordance with the maximum peak-particle-velocity limit of paragraph (e)(2)(ii)(B), the scaled-distance equation of paragraph (e)(2)(ii)(C), or the blasting-level chart of paragraph (e)(2)(ii)(D), or such other standard established under paragraph (e)(2)(ii)(E), of this section. All structures in the vicinity of the blasting area, not listed in paragraph (e)(2)(ii)(B), of this section, such as water towers, pipelines and other utilities, tunnels, dams, impoundments, and underground mines, shall be protected from damage by establishment of a maximum allowable limit on the ground vibration, submitted by the operator and approved by the regulatory authority before the initiation of blasting.

(B) *Maximum peak-particle velocity.* (*1*) The maximum ground vibration shall not exceed the following limits at the location of any dwelling, public building, school, church, or community or institutional building outside the permit area.

Distance (*D*) from blasting site, in feet	Maximum allowable peak particle velocity (*V*max) for ground vibration, in inches/second [1]	Scaled-distance factor to be applied without seismic monitoring [2]
0 to 300	1.25	50
301 to 5,000	1.00	55
5,001 and beyond	0.75	65

[1] Ground vibration shall be measured as particle velocity. Particle velocity shall be recorded in three mutually perpendicular directions. The maximum allowable peak particle velocity shall apply to each of the three measurements.

[2] Applicable to the scaled-distance equation of paragraph (e)(2)(ii)(C)(*1*) of this section.

(*2*) A seismographic record shall be provided for each blast.

(C) *Scaled-distance equation.* (*1*) The operator may use the scaled-distance equation, $W=(D/Ds)^2$, to determine the allowable charge weight of explosives to be detonated in any 8-millisecond period without seismic monitoring; where W = the maximum weight of explosives, in pounds; D = the distance, in feet, from the blasting site to the nearest protected structure; and *Ds* = the scaled-distance factor, which may initially be approved by the regulatory authority using the values for scaled-distance factor listed in paragraph (e)(2)(ii)(B)(*1*), of this section.

(*2*) The development of a modified scaled-distance factor may be authorized by the regulatory authority on receipt of a written request by the operator, supported by seismographic records of blasting at the minesite. The modified scaled-distance factor shall be determined such that the particle velocity of the predicted ground vibration will not exceed the prescribed maximum allowable peak particle velocity of paragraph (e)(2)(B)(*1*) of this section at a 95-percent confidence level.

(D) *Blasting-level chart.* (*1*) An operator may use the ground-vibration limits in Figure 1 to determine the maximum allowable ground vibration.

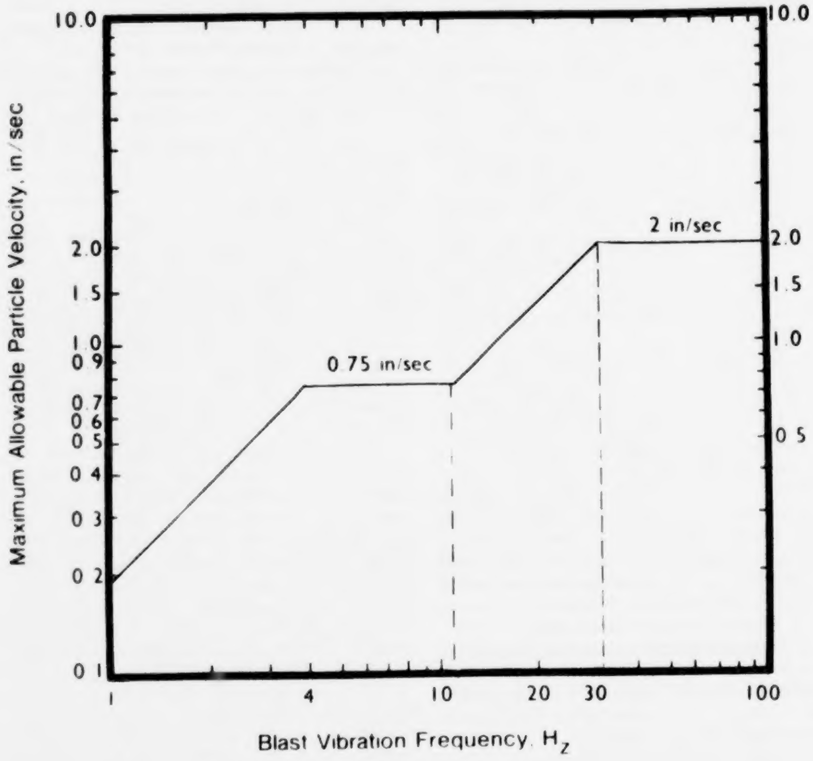

Figure 1 Alternative blasting level criteria

(Source: Modified from figure B-1, Bureau of Mines RI 8507)

(*2*) If the Figure 1 limits are used, a seismographic record including both particle-velocity and vibration-frequency levels shall be provided for each blast. The method for the analysis of the predominant frequency contained in the blasting records shall be approved by the regulatory authority before application of this alternative blasting criterion.

(E) The maximum allowable ground vibration shall be reduced by the regulatory authority beyond the limits otherwise provided by this section, if determined necessary to provide damage protection.

(F) The regulatory authority may require an operator to conduct seismic monitoring of any or all blasts and may specify the location at which the measurements are taken and the degree of detail necessary in the measurement.

(iii) If blasting is conducted in accordance with paragraph (e)(2)(i) of this section, the maximum ground-vibration and airblast standards shall not apply at the following locations:

(A) At structures owned by the permittee and not leased to another person.

(B) At structures owned by the permittee and leased to another person, if a written waiver by the lessee is submitted to the regulatory authority before blasting.

(3) *Records of blasting operations.* A record of each blast, including seismograph reports, shall be retained for at least 3 years and shall be available for inspection by the regulatory authority and the public on request. The record shall contain the following data—

(i) Name of permittee, operator, or other person conducting the blast;

(ii) Location, date, and time of blast;

(iii) Name, signature, and license number of blaster-in-charge;

(iv) Direction and distance, in feet, to nearest dwelling, school, church, or commercial or institutional building neither owned or leased by the permittee;

(v) Weather conditions;

(vi) Type of material blasted;

(vii) Number of holes, burden, and spacing;

(viii) Diameter and depth of holes;

(ix) Types of explosives used;

(x) Total weight of explosives used;

(xi) Maximum weight of explosives detonated within any 8 millisecond period;

(xii) Maximum number of holes detonated within any 8 millisecond period;

(xiii) Methods of firing and type of circuit;

(xiv) Type and length of stemming;

(xv) If mats or other protections were used;

(xvi) Type of delay detonator used, and delay periods used;

(xvii) Seismograph records, where required, including—

(A) Seismograph reading, including exact location of seismograph and its distance from the blast;

(B) Name of person taking the seismograph reading; and

(C) Name of person and firm analyzing the seismograph record.

[42 FR 62680, Dec. 13, 1977; 43 FR 2722, Jan. 19, 1978, as amended at 48 FR 9805, Mar. 8, 1983]

§ 715.20 Revegetation.

(a) *General.* (1) The permittee shall establish on all land that has been disturbed, a diverse, effective, and permanent vegetative cover of species native to the area of disturbed land or species that will support the planned postmining uses of the land approved according to § 715.13. For areas designated as prime farmland, the reclamation procedures of § 716.7 shall apply.

(2) Revegetation shall be carried out in a manner that encourages a prompt vegetative cover and recovery of productivity levels compatible with approved land uses. The vegetative cover shall be capable of stabilizing the soil surface with respect to erosion. All disturbed lands, except water areas and surface areas of roads that are approved as a part of the postmining land use, shall be seeded or planted to achieve a vegetative cover of the same seasonal variety native to the area of disturbed land. If both the pre- and postmining land use is intensive agriculture, planting of the crops normally grown will meet the requirement. Vegetative cover will be considered of the same seasonal variety when it consists of a mixture of species of equal or superior utility for the intended land use when compared with the utility of naturally occurring vegetation during each season of the year.

(3) On Federal lands, the surface management agency shall be consulted for approval prior to revegetation regarding what species are selected, and following revegetation, to determine when the area is ready to be used.

(b) *Use of introduced species.* Introduced species may be substituted for native species only if appropriate field trials have demonstrated that the introduced species are of equal or superior utility for the approved postmining land use, or are necessary to achieve a quick, temporary, and stabilizing cover. Such species substitution shall be approved by the regulatory authority. Introduced species shall meet applicable State and Federal seed or introduced species statutes, and shall not include poisonous or potentially toxic species.

(c) *Timing of revegetation.* Seeding and planting of disturbed areas shall be conducted during the first normal period for favorable planting conditions after final preparation. The normal period for favorable planting shall be that planting time generally accepted locally for the type of plant materials selected to meet specific site conditions and climate. Any disturbed areas, except water areas and surface areas or roads that are approved under § 715.13 as part of the postmining land use, which have been graded shall be seeded with a temporary cover of small grains, grasses, or legumes to control erosion until an adequate permanent cover is established. When rills or gullies, that would preclude the successful establishment of vegetation or the achievement of the postmining land use, form in regraded topsoil and overburden materials as specified in § 715.14, additional regrading or other stabilization practices will be required before seeding and planting.

(d) *Mulching.* Mulch shall be used on all regraded and topsoiled areas to control erosion, to promote germination of seeds, and to increase the moisture retention of the soil. Mulch shall be anchored to the soil surface where appropriate, to insure effective protection of the soil and vegetation. Mulch means vegetation residues or other suitable materials that aid in soil stabilization and soil moisture conservation, thus providing micro-climatic conditions suitable for germination and growth, and do not interfere with the postmining use of the land. Annual grains such as oats, rye and wheat may be used instead of mulch when it is shown to the satisfaction of the regulatory authority that the substituted grains will provide adequate stability and that they will later be replaced by species approved for the postmining use.

(e) *Methods of revegetation.* (1) The permittee shall use technical publications or the results of laboratory and field tests approved by the regulatory authority to determine the varieties, species, seeding rates, and soil amendment practices essential for establishment and self-regeneration of vegetation. The regulatory authority shall approve species selection and planting plans.

(2) Where hayland, pasture, or range is to be the postmining land use, the species of grasses, legumes, browse, trees, or forbes for seeding or planting and their pattern of distribution shall be selected by the permittee to provide a diverse, effective, and permanent vegetative cover with the seasonal variety, succession, distribution, and regenerative capabilities native to the area. Livestock grazing will not be allowed on reclaimed land until the seedlings are established and can sustain managed grazing. The regulatory authority, in consultation with the permittee and the landowner or in concurrence with the governmental landmanaging agency having jurisdiction over the surface, shall determine when the revegetated area is ready for livestock grazing.

(3) Where forest is to be the postmining land use, the permittee shall plant trees adapted for local site conditions and climate. Trees shall be planted in combination with an herbaceous cover of grains, grasses, legumes, forbs, or woody plants to provide a diverse, effective, and permanent vegetation cover with the seasonal variety, sucession, and regeneration capabilities native to the area.

(4) Where wildlife habitat is to be included in the postmining land use, the permittee shall consult with appropriate State and Federal wildlife and land management agencies and shall select

those species that will fulfill the needs of wildlife, including food, water, cover, and space. Plant groupings and water resources shall be spaced and distributed to fulfill the requirements of wildlife.

(f) *Standards for measuring success of revegetation.* (1) Success of revegetation shall be measured on the basis of reference areas approved by the regulatory authority. Reference areas mean land units of varying size and shape identified and maintained under appropriate management for the purpose of measuring ground cover, productivity and species diversity that are produced naturally. The reference areas must be representative of geology, soils, slope, aspect, and vegetation in the permit area. Management of the reference area shall be comparable to that which will be required for the approved postmining land use of the area to be mined. The regulatory authority shall approve the estimating techniques that will be used to determine the degree of success in the revegetated area.

(2) The ground cover of living plants on the revegetated area shall be equal to the ground cover of living plants of the approved reference area for a minimum of two growing seasons. The ground cover shall not be considered equal if it is less than 90 percent of the ground cover of the reference area for any significant portion of the mined area. Exceptions may be authorized by the regulatory authority for—

(i) Previously mined areas that were not reclaimed to the standards required by this chapter prior to the effective date of these regulations. The ground cover of living plants for such areas shall not be less than required to control erosion, and in no case less than that existing before redisturbance.

(ii) Areas to be developed immediately for industrial or residential use. The ground cover of living plants shall not be less than required to control erosion. As used in this paragraph, *immediately* means less than 2 years after regrading has been completed for the area to be used; and

(iii) Areas to be used for agricultural cropland purposes. Success in revegetation of cropland shall be determined on the basis of crop production from the mined area compared to the reference area. Crop production from the mined area shall be equal to that of the approved reference area for a minimum of two growing seasons. Production shall not be considered equal if it is less than 90 percent of the production of the reference area for any significant portion of the mined area.

(3) Species diversity, distribution, seasonal variety, and vigor shall be evaluated on the basis of the results which could reasonably be expected using the methods of revegetation approved under paragraph (e) of this section.

(g) *Seeding of stockpiled topsoil.* Topsoil stockpiled in compliance with § 715.16 must be seeded or planted with an effective cover of nonnoxious, quick growing annual and perennial plants during the first normal period for favorable planting conditions or protected by other approved measures as specified in § 715.16.

§ 715.200 Interpretative rules related to general performance standards.

The following interpretations of rules promulgated in Part 715 of this chapter have been adopted by the Office of Surface Mining Reclamation and Enforcement.

(a)-(b) [Reserved]

(c) *Interpretation of § 715.16(a)(4)—Topsoil Removal.* (1) Results of physical and chemical analyses of topsoil and selected overburden materials to demonstrate that the selected overburden materials or overburden materials/topsoil mixture is more suitable for restoring land capability and productivity than the available topsoil, provided the analyses, trials, or tests are certified by a qualified soil scientist or agronomist, may be obtained from any one or a combination of the following sources:

(i) U.S. Department of Agriculture Soil Conservation Service published data based on established soil series;

(ii) U.S. Department of Agriculture Soil Conservation Service Technical Guides;

(iii) State agricultural agency, university, Tennessee Valley Authority, Bureau of Land Management or U.S. Department of Agriculture Forest Service published data based on soil series properties and behavior; or

(iv) Results of physical and chemical analyses, field site trials, or greenhouse tests of the topsoil and overburden materials (soil series) from the permit area.

(2) If the operator demonstrates through soil survey or other data that the topsoil and unconsolidated material are insufficient and substitute materials will be used, only the substitute materials must be analyzed in accordance with 30 CFR 715.16(a)(4)(i).

(Sec. 501, 502, 504, 508, 515, 516, Pub. L. 95-87, 91 Stat. 467, 468, 471, 478, 492, 496 (30 U.S.C. 1251, 1252, 1254, 1258, 1265, 1266))

[45 FR 26000, Apr. 16, 1980 and 45 FR 39447, June 10, 1980, as amended at 45 FR 73946, Nov. 7, 1980]

PART 716—SPECIAL PERFORMANCE STANDARDS

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716.7 Prime farmland.
716.10 Information collection.

AUTHORITY: Secs. 201, 501, 527 and 529, Pub. L. 95-87, 91 Stat. 445 (30 U.S.C. 1201).

SOURCE: 42 FR 62691, Dec. 13, 1977, unless otherwise noted.

§ 716.1 General obligations.

(a) This part establishes special initial performance standards that apply in the following special circumstances—

(1) § 716.2 applies to surface coal mining operations on steep slopes.

(2) § 716.3 applies to surface coal mining operations involving mountaintop removal.

(3) § 716.4 applies to special bituminous coal mines.

(4) § 716.5 applies to anthracite surface coal mining operations.

(5) § 716.6 applies to surface coal mining operations in Alaska.

(6) § 716.7 applies to surface coal mining operations on prime farmlands.

(b) All surface coal mining and reclamation operations subject to this part shall comply with the applicable special performance standards in this part. Such operations shall also comply with all general performance standards in Part 715 of this chapter unless specifically exempted *in this part* from the requirements of Part 715.

§ 716.2 Steep-slope mining.

The permittee conducting surface coal mining and reclamation operations on natural slopes that exceed 20 degrees, or on lesser slopes that require measures to protect the area from disturbance, as determined by the regulatory authority after consideration of soils, climate, the method of operation, geology, and other regional characteristics, shall meet the following performance standards. The standards of this section do not apply where mining is done on a flat or gently rolling terrain with an occasional steep slope through which the mining proceeds and leaves a plain or predominantly flat area; or where the mining is governed by §716.3.

(a) Spoil, waste materials or debris, including that from clearing and grubbing, and abandoned or disabled equipment, shall not be placed or allowed to remain on the downslope.

(b) The highwall shall be completely covered with spoil and the disturbed are a graded to comply with the provisions of § 715.14 of this chapter. Land above the highwall shall not be disturbed unless the regulatory authority finds that the disturbance will facilitate compliance with the requirements of this section.

(c) Material in excess of that required to meet the provisions of § 715.14 of this chapter shall be disposed of in accordance with the requirements of § 715.15 of this chapter.

(d) Woody materials may be buried in the backfilled area only when burial does not cause, or add to, instability of the backfill. Woody materials may be chipped and distributed through the backfill when approved by the regulatory authority.

(e) Variances from approximate original contour restoration requirements. (1) This section applies to surface coal mining operations on steep slopes where the operation is not to be reclaimed to achieve the approximate original contour and is not a mountaintop removal operation.

(2) The objective of this subsection is to allow for a variance from the approximate original contour restoration requirements on steep slopes to—

(i) Improve watershed control of the area; and

(ii) Allow the land to be used for an industrial, commercial, residential, or public use, including recreational facilities.

(3) The regulatory authority may grant a variance from the requirement for restoration of the affected lands to their approximate original contour only if it first finds, in writing, on the basis of a showing made by the permittee, that all of the following requirements are met:

(i) The permittee has demonstrated that the purpose of the variance is to make the lands to be affected within the permit area suitable for an industrial, commercial, residential, or public use postmining land use and that the proposed industrial, commercial, residential, or public use is likely to occur.

(ii) The proposed use, after consultation with the appropriate land-use planning agencies, if any, constitutes an equal or better economic or public use.

(iii) The permittee has demonstrated that compliance with the requirements for acceptable alternative postmining industrial, commercial, residential or public land uses of 30 CFR 715.13 has been achieved except for the requirement at § 715.13(d)(3) and (4) to provide letters of commitment. The permittee must demonstrate to the regulatory authority that necessary public facilities are likely to be provided and that the plan is financially feasible.

(iv) The permittee has demonstrated that the watershed of the area will be improved as compared to the condition of the watershed before mining. The watershed will be deemed improved only if—

(A) There will be a reduction in the amount of total suspended solids or other pollutants discharged to ground or surface waters from the area as compared to such discharges; or, there will be reduced flood hazards or more even flow within the watershed containing the area due to reduction of the peak flow discharges from precipitation events or thaws; or any other criterion authority in the granting of the variance. While improving one or more variables, the permittee must also at least maintain the variables not improved at their premining levels;

(B) The total volume of flows from the proposed affected lands, during every season of the year, will not vary in a way that adversely affects the ecology of any surface water or any existing or planned use of surface or ground water; and

(C) The appropriate State environmental agency approves the plan.

(v) The permittee has demonstrated that the owner of the surface of the lands within the permit area has knowingly requested, in writing, as a part of the application, that a variance be granted. The request shall be made separately from any surface owner consent given for the operation and shall show an understanding that the variance could not be granted without the surface owner's request.

(vi) The proposal is designed and certified by a qualified registered professional engineer in conformance with professional standards established to assure the stability, drainage, and configuration necessary for the intended use of the site.

(vii) All other requirements of the Act and these regulations will be met by the proposed operations.

(4) Every permittee who obtains a variance under this subsection shall:

(i) Backfill completely the highwall with spoil material, in a manner which results in a static factor of safety of at least 1.3 using general geotechnical analysis.

(ii) Improve the watershed control of the area by reducing the peak flow from precipitation or thaw or reducing the total suspended solids or other pollutants in the surface water discharge during precipitation or thaw or by attaining the criteria approved by the regulatory authority in the granting of the variance. While improving one or more variables, the permittee must also at least maintain the variables not improved at their premining levels. The total volume of flow during every season of the year shall not vary in a way that adversely affects the ecology of any surface or ground water.

(iii) Disturb land above the highwall only to the extent that the regulatory authority deems appropriate and approves as necessary to facilitate compliance with the provisions of this section. The regulatory authority may authorize such a disturbance above the highwall if it finds the disturbance is necessary to—

(A) Blend the solid highwall and the backfilled material; or

(B) Control surface runoff; or

(C) Provide access to the area above the highwall.

(iv) Place off the mine bench no more than the amount of spoil necessary to achieve the postmining land use, ensure the stability of spoil retained on the bench, and meet all other requirements of the Act and Parts 710 through 725 of this chapter. All spoil not retained on the bench shall be placed in accordance with the Act and these regulations.

(5) The regulatory authority shall review every variance granted pursuant to this subsection not more than three years from the date of issuance of the permit to ensure that the proposed alternative postmining use is proceeding in accordance with the terms of the approved plan, unless the permittee affirmatively so demonstrates.

[42 FR 62691, Dec. 13, 1977, as amended at 45 FR 83168, Dec. 17, 1980]

§ 716.3 Mountaintop removal.

(a) Surface coal mining and reclamation operations that remove entire coal seams running through the upper fraction of a mountain, ridge, or hill by removing all of the overburden and creating a level plateau or gently rolling contour with no highwalls remaining are exempt from the requirements of § 715.14 of this chapter for achieving approximate original contour, if the following requirements are met:

(1) An industrial, commercial, agricultural, residential, or public facility (including recreational facilities) use is proposed for the affected land.

(2) The alternative land use criteria in § 715.13(d) of this chapter are met and the proposal is approved by the regulatory authority.

(3) All other applicable requirements of Part 715 of this chapter can be met.

(b) Surface coal mining and reclamation operations conducted under this section shall comply with the following standards:

(1) An outcrop barrier of sufficient width consisting of the toe of the lowest coal seam, and its associated overburden shall be retained to prevent slides and erosion.

(2) The final graded top plateau slopes on the mined area shall be less than $1v{:}5h$ so as to create a level plateau or gently rolling configuration and the outslopes of the plateau shall not exceed $1v{:}2h$, except where engineering data substantiates and the regulatory authority finds that a minimum static safety factor of 1.5 will be attained.

(3) The resulting level or gently rolling contour shall be graded to drain inward from the outslope except at specific points where it drains over the outslope in protected stable channels.

(4) Damage to natural watercourses below the area to be mined shall be prevented.

(5) Spoil shall be placed on the mountaintop bench as is necessary to achieve the postmining land use approved under § 715.13 of this chapter. All excess spoil material not retained on the mountaintop shall be placed in accordance with the standards of § 715.15 of this chapter.

(c)(1) All permits giving approval for mountaintop removal shall be reviewed not more than 3 years from the date of issuance of the permit, unless the permittee affirmatively demonstrates and the regulatory authority finds that all operations are proceeding in accordance with the terms of the permit and applicable requirements of the Act and the regulations of this part. The terms of the permit shall be in accordance with the requirements of the Act and the regulations of this part.

(2) The terms of a permit for mountaintop removal may be modified by

the regulatory authority if it determines that more stringent measures are necessary to prevent or control slides and erosion, prevent damage to natural water courses, avoid water pollution, or to assure successful revegetation.

§ 716.4 Special bituminous coal mines.

(a) *Definition.* Special bituminous coal surface mines as used in this section means those bituminous coal surface mines that are located in the State of Wyoming and that are being mined or will be mined according to the following criteria:

(1) Excavation of the mine pit takes place on a relatively limited site for an extended period of time. For the purposes of this section, mine pit means an open-pit mine in which the surface opening is at least the full size of the excavation and has a contiguous border. The pit generally is quite deep and is formed by the removal of relatively large amounts of overburden to obtain lesser amounts of coal. The term as used in this section applies only to mining operations that extract coal from seams dipping 15 degrees or more from the horizontal.

(2) Excavation of the mine pit follows a coal seam that inclines 15 degrees or more from the horizontal, and as the excavation proceeds downward it expands laterally to maintain stability of the pitwall or as necessary to accommodate the orderly expansion of the total mining operations.

(3)(i) Surface coal mining operations in the mine pit have taken place since January 1, 1972, and

(A) Operations in the mine pit are removing more than one coal seam, and

(B) Mining has begun on the deepest coal seam scheduled to be mined; or

(ii) Surface coal mining operations which may be developed after August 3, 1977, and are conducted on lands immediately adjacent to operations meeting the criteria of paragraph (a)(3)(i) of this section.

(4) The amount of material removed from the pit is large in proportion to the surface area disturbed.

(5) There is no practicable alternative to the deep open-pit method of mining the coal.

(6) There is no practicable way to entirely reclaim the land as required by Part 715 of this chapter.

(b) *Requirements for special bituminous coal mines operating prior to July 1, 1973.* Those portions of a special bituminous coal mine approved for operation prior to July 1, 1973, including the orderly expansion of such a mine pit to the extent authorized by State law, shall at a minimum meet the general performance standards of Part 715 of this chapter for all operations conducted on the permit area outside the mine pit and for those operations associated with spoil storage areas. The standards of Part 715 also apply to the mine pit with the exception of § 715.14, which relates to backfilling and grading. Special requirements for backfilling and grading the mine pit area are as follows:

(1) In the final mine area, highwalls will be allowed to remain and benches will be allowed. Details of the benches shall be included in the mine plans submitted to the regulatory authority for approval.

(2) The exposed pit floors will be sloped and graded to provide access to the area, and topsoil shall be applied and the floor area seeded according to the requirements of §§ 715.16 and 715.20. Where water impoundments are included as part of the mine plan, riprap may be used if necessary to prevent erosion.

(3) Spoil piles will be graded and contoured with no more than overall slope of 17 degrees allowed, and terraces may be used to break the slope when it can be shown that terraces will accomplish the required reclamation. For the postmining land use, steeper slopes may be permitted upon approval of the regulatory authority, provided it can be demonstrated that such method will provide the required results.

(c) *Requirements for other special bituminous coal mines.* Those portions of a special bituminous coal mine which do not meet the criteria of paragraph (b) of this section shall, at minimum meet the general performance standards of Part 715 of this chapter for all operations conducted on the permit area outside the mine pit and for these operations associated with spoil storage areas. The standards of Part 715 also apply to the mine pit with the exception of § 715.14, which relates to backfilling and grading. Special requirements for backfilling and grading the mine pit area are as follows:

(1) *Slope specifications.* Slope specifications for the postmining land use shall be based on an average of the natural slopes measured in the immediate area of the mine site, and the maximum inclination of the slopes in the reclaimed area shall not be greater than this average slope. However, slopes steeper than the average of the natural slopes may be approved by the regulatory authority if it can be demonstrated that returning the minded area to a slope equal to or less than the average natural slope would greatly increase the amount of disturbed land. Measurements of individual slopes, locations at which measurements are made, and the average natural slope as determined from the individual slope measurements shall be submitted for approval to the regulatory authority. The regulatory authority may make an independent slope survey to verify the average natural slope.

(2) *Postmining land uses that do not include permanent water impoundments.* (i) The final mine area shall be backfilled, graded, and contoured to the extent necessary to return the land to the use approved by the regulatory authority.

(ii) All backfilling, grading, and contouring shall be done in a manner to preserve the original drainage system or to provide substitute drainage systems approved by the regulatory authority.

(iii) Terraces or benches may be used only if it can be demonstrated that contouring methods will not provide the required results. Detailed plans of dimensions and design of the terraces or benches, check dams, erosion prevention techniques, and slopes of the terraces or benches and their intervals shall be submitted to the regulatory authority for approval before construction.

(iv) Depressions that will accumulate water shall not be allowed unless they are approved under paragraph (3).

(3) *Postmining land uses that include permanent water impoundments.* (i) The exposed mine pit area shall be sloped, graded, and contoured to blend with the topography of the surrounding terrain and to provide for access to the area. Where necessary to prevent erosion, riprap shall be used.

(ii) Under certain conditions where it can be demonstrated by the permittee that the pitwall can be stabilized by terracing or other techniques it may be permissible to leave one-half the proposed shoreline, as measured along the circumference, composed of the stabilized pitwall. The remaining part of the shoreline shall be graded and contoured to blend with the topography of the surrounding terrain and to provide access to the area. Detailed explanations of the techniques to be used to stabilize the pitwalls shall be submitted for approval to the regulatory authority. The regulatory authority may verify the effectiveness of the proposed stabilization techniques from a study made by an independent engineering company and based on this information and an onsite inspection, the regulatory authority will then determine the acceptability of the proposed stabilization techniques.

(d) In the event of an amendment or revision to the State of Wyoming's regulatory program, regulations, or decisions made thereunder governing special bituminous coal mines, the Secretary shall issue such additional regulations as necessary to meet the purposes of the Act.

§ 716.5 Anthracite coal mines.

(a) Permittees of anthracite surface coal mining and reclamation operations in those States where the mines are regulated by State environmental protection standards shall be subject to the environmental protection standards of the State regulatory program in existence on August 3, 1977, instead of Part 715 and Part 717 of this chapter.

(b) The environmental protection provisions of Title 25, Rules and Regulations, Part 1, Department of Environmental Resources, Commonwealth of Pennsylvania, shall apply to reclamation of anthracite surface coal mining and reclamation operations in the Commonwealth of Pennsylvania instead of Part 715 and Part 717 of this chapter. In addition, the regulations of the Commonwealth of Pennsylvania pertaining to standards for air and water quality shall apply instead of the regulations of Part 715 and Part 717 of this chapter.

(c) If a State's regulatory program or regulations for anthracite surface coal mining and reclamation operations in force at the time of this Act are amended, the Secretary, upon receipt of a notice of amendment, shall issue additional regulations as necessary to meet the purposes of this Act.

[45 FR 61259, Sept. 15, 1980]

§ 716.6 Coal mines in Alaska.

(a) Permittees of surface coal mining operations in Alaska from which coal has been mined on or after August 3, 1977, shall conduct operations in a manner that, at a minimum, meets the performance standards of this chapter.

(b) The Secretary, after consultation with the Governor of Alaska, may modify the applicability of any environmental protection standard to any surface coal mining operation if he determines that it is necessary to ensure the continued operation of the mine.

(c) Any person may petition the Secretary to modify the applicability of a performance standard to a coal mine in Alaska. No particular form of petition is required. However, the petition shall be in writing and shall identify clearly—

(1) The performance standard involved;

(2) The alternative methods to be used to protect the environment and public health and safety;

(3) The reasons why a modification is requested with full descriptions of the impacts continued requirements for compliance with the performance standard to be modified would have on mining and reclamation and of the impacts the proposed method would have on the environment and public health and safety; and

(4) The location of the mine.

(d) If the Secretary determines that the petition presents reasonable justification for modifying the performance standard, he may grant a temporary suspension of enforcement of the performance standard, and he shall publish a notice of intention to modify the applicability of the performance standard in the FEDERAL REGISTER and in a newspaper of general circulation in the area of Alaska where the affected coal mine is located. A public hearing shall be held in Alaska and any person may testify for or against the proposed modification. The Secretary, after considering the public comments, and consulting with the Governor of Alaska, shall publish his decision in the FEDERAL REGISTER and in the same newspaper in which the original notice was published.

§ 716.7 Prime farmland.

(a) *Applicability.* (1) Permittees of surface coal mining and reclamation operations conducted on prime farmland shall comply with the general performance standards of Part 715 of this chapter in addition to the special requirements of this section.

(2) Except as otherwise provided in this paragraph, the requirements of the section are applicable to any lands covered by a permit application filed on or after August 3, 1977. This section does not apply to:

(i) Lands on which surface coal mining and reclamation operations are conducted pursuant to any permit issued prior to August 3, 1977; or

(ii) Lands on which surface coal mining and reclamation operations are conducted pursuant to any renewal or revision of a permit issued prior to August 3, 1977; or

(iii) Lands included in any existing surface coal mining operations for which a permit was issued for all or any part thereof prior to August 3, 1977, provided that:

(A) Such lands are part of a single continuous surface coal mining operation begun under a permit issued before August 3, 1977; and

(B) The permittee had a legal right to mine the lands prior to August 3, 1977, through ownership, contract, or lease but not including an option to buy, lease, or contract; and

(C) The lands contain part of a continuous recoverable coal seam that was being mined in a single continuous mining pit (or multiple pits if the lands are proven to be part of a single continuous surface coal mining operation) begun under a permit issued prior to August 3, 1977.

(3) For purposes of this section:

(i) "renewal" of a permit shall mean a decision by the regulatory authority to extend the time by which the permittee may complete mining within the boundaries of the original permit, and "revision" of the permit shall mean a decision by the regulatory authority to allow changes in the method of mining operations within the original permit area, or the decision of the regulatory authority to allow incidental boundary changes to the original permit;

(ii) a pit shall be deemed to be a single continuous mining pit even if portions of the pit are crossed by a road, pipeline, railroad, or powerline or similar crossing;

(iii) a single continuous surface coal mining operation is presumed to consist only of a single continuous mining pit under a permit issued prior to August 3, 1977, but may include noncontiguous parcels if the operator can prove by clear and convincing evidence that, prior to August 3, 1977, the contiguous parcels were part of a single permitted operation. For the purposes of this paragraph, clear and convincing evidence includes, but is not limited to, contracts, leases, deeds or other properly executed legal documents (not including options) that specifically treat physically separate parcels as one surface coal mining operation.

(b) *Definitions.* For purposes of this section, the following definitions are applicable.

(1) *Prime farmland* means those lands which are defined by the Secretary of Agriculture in 7 CFR 657 and which have been historically used for cropland.

(2) *Historically used for cropland* means (i) lands that have been used for cropland for any 5 years or more out of the 10 years immediately preceding the acquisition, including purchase, lease, or option, of the land for the purpose of conducting or allowing through resale, lease, or option the conduct of surface coal mining and reclamation operations; (ii) lands that the regulatory authority determines, on the basis of additional cropland history of the surrounding lands and the lands under consideration, that the permit area is clearly cropland but falls outside the specific 5-years-in-10 criterion, or (iii) lands that would likely have been used as cropland for any 5 out of the last 10 years immediately preceding such acquistion but for some fact of ownership or control of the land unrelated to the productivity of the land, in which case the regulations for prime farmland may be applied to include more years of cropland history only to increase the prime farmland acreage to be protected.

(3) *Cropland* means land used for the production of adapted crops for harvest, alone or in a rotation with grasses and legumes, and includes row crops, small grain crops, hay crops, nursery crops, orchard crops, and other similar speciality crops.

(4) The soils either have no water table or have a water table that is maintained at a sufficient depth during the cropping season to allow food, feed, fiber, forage, and oilseed crops common to the area to be grown.

(5) The soils can be managed so that in all horizons within a depth of 40 inches or in the root zone if the root zone is less than 40 inches deep, during part of each year the conductivity of saturation extract is less than 4 mmhos/cm and the exchangeable sodium percentage (ESP) is less than 15.

(6) The soils are not flooded frequently during the growing season (less often than once in 2 years).

(7) The soils have a product of K (erodibility factor) × percent slope of less than 2.0 and a product of I (soil erodibility) × C (climatic factor) not exceeding 60.

(8) The soils have a permeability rate of at least 0.06 inch per hour in the upper 20 inches and the mean annual soil temperature at a depth of 20 inches is less than 59 degrees F.; the permeability rate is not a limiting factor if the mean annual soil temperature is 59 degress F. or higher.

(9) Less than 10 percent of the surface layer (upper 6 inches) in these soils consists of rock fragments coarser than 3 inches.

(c) *Indentification of prime farmland.* Prime farmland shall be identified on the basis of soil surveys submitted by the applicant. The regulatory authority also may require data on irrigation, drainage, flood control, and subsurface water managament. The requirement for submission of soil surveys may be waived by the regulatory authority, if the applicant can demonstrate according to the procedures in paragraph (d) of this section that no prime farmlands are involved. Soil surveys shall be conducted according to standards of the National Cooperative Soil Survey, which include the procedures set forth in U.S. Department of Agriculture Handbooks 436 (Soil Taxonomy) and 18 (Soil Survey Manual), and shall include—

(1) Data on moisture availability, temperature regime, flooding, water table, erosion characteristics, permeability, or other information that is needed to determine prime farmland in accordance with paragraph (b) of this section;

(2) A map designating the exact location and extent of the prime farmland; and

(3) A description of each soil mapping unit.

(d) *Negative determination of prime farmland.* The land shall not be considered as prime farmland where the applicant can demonstrate one or more of the following situations—

(1) Lands within the proposed permit boundaries have not been historically used for cropland.

(2) The slope of all land within the permit area is 10 percent or greater.

(3) Land within the permit area is not irrigated or naturally subirrigated, has no developed water supply that is dependable and of adequate quality, and the average annual precipitation is 14 inches or less.

(4) Other factors exist, such as a very rocky surface, or the land is frequently flooded, which clearly place all land within the area outside the purview of prime farmland.

(5) A written notification based on scientific findings and soil surveys that land within the proposed mining area does not meet the applicability requirements in paragraph (a) of this section is submitted to the regulatory authority by a qualified person other than the applicant, and is approved by the regulatory authority.

(e) *Plan for restoration of prime farmland.* The applicant shall submit to the regulatory authority a plan for the mining and restoration of any prime farmland within the proposed permit boundaries. This plan shall be used by the regulatory authority in judging the technological capability of the applicant to restore prime farmlands. The plan shall include—

(1) A description of the original undisturbed soil profile, as determined from a soil survey, showing the depth and thickness of each of the soil horizons that collectively constitute the root zone of the locally adapted crops and are to be removed, stored, and replaced;

(2) The proposed method and type of equipment to be used for removal, storage, and replacement of the soil in accordance with paragraph (g) of this section;

(3) The location of areas to be used for the separate stockpiling of the soil and plans for soil stabilization before redistribution;

(4) If applicable, documentation such as agricultural school studies or other scientific data from comparable areas that supports the use of other suitable material, instead of the A, B or C soil horizon to obtain on the restored area equivalent or higher levels of yield as non-mined prime farmlands in the surrounding area under equivalent levels of management; and

(5) Plans for seeding or cropping the final graded mine land and the conservation practices to control erosion and sedimentation during the first 12 months after regrading is completed. Proper adjustments for seasons must be made so that final graded land is not exposed to erosion during seasons when vegetation or conservation practices cannot be established due to weather conditions; and

(6) Available agricultural school studies, company data, or other scientific data for comparable areas that demonstrate that the applicant using

his proposed method of reclamation will achieve, within a reasonable time equivalent or higher levels of yield after mining as existed before mining.

(f) *Consultation with Secretary of Agriculture and issuance of permit.* (1) The regulatory authority may grant a permit which shall incorporate the plan submitted under paragraph (e) of this section, if it finds in writing that the applicant—

(i) Has the technological capability to restore the prime farmland within the proposed permit area, within a reasonable time, to equivalent or higher levels of yield as nonmined prime farmland in the surrounding area under equivalent levels of management; and

(ii) Will achieve compliance with the standards of paragraph (g) of this section.

(2) Before any permit is issued for areas that include prime farmlands, the regulatory authority shall consult with the Secretary of Agriculture. The Secretary of Agriculture will provide a review of the proposed method of soil reconstruction and comment on possible revisions that will result in a more complete and adequate restoration. The Secretary of Agriculture has assigned his responsibilities under this paragraph to the Administrator of the U.S. Soil Conservation Service and the U.S. Soil Conservation Service will carry out the consultation and review through their State Conservationist, located in each State.

(g) *Special requirements.* For all prime farmlands to be mined and reclaimed, the applicant shall meet the following special requirements:

(1) All soil horizons to be used in the reconstruction of the soil shall be removed before drilling, blasting, or mining ro prevent contaminating the soil horizons with undesirable materials. Where removal of soil horizons result in erosion that may cause air and water pollution, the regulatory authority shall specify methods of treatment to control erosion of exposed overburden. The permittee shall—

(i) Remove separately the entire A horizon or other suitable soil materials which will create a final soil having an equal or greater productive capacity than that which existed prior to mining in a manner that prevents mixing or contamination with other material before replacement;

(ii) Remove separately the B horizon of the natural soil or a combination of B horizon and underlying C horizon or other suitable soil material that will create a reconstructed root zone of equal or greater productivity capacity than that which existed prior to mining in a manner that prevents mixing or contamination with other material; and

(iii) Remove separately the underlying C horizons or other strata, or a combination of such horizons or other strata, to be used instead of the B horizon that are of equal or greater thickness and that can be shown to be equal or more favorable for plant growth than the B horizon, and that when replaced will create in the reconstructed soil a final root zone of comparable depth and quality to that which existed in the natural soil.

(2) If stockpiling of soil horizons is allowed by the regulatory authority in lieu of immediate replacement, the A horizon and B horizon must be stored separately from each other. The stockpiles must be placed within the permit area and where they will not be disturbed or exposed to excessive erosion by water or wind before the stockpiled horizons can be redistributed on terrain graded to final contour. Stockpiles in place for more than 30 days must meet the requirements of § 715.16(c).

(3) Scarify the final graded land before the soil horizons are replaced.

(4) Replace the material from the B horizon, or other suitable material specified in paragraph (g)(1)(ii) or (g)(1)(iii) of this section in such a manner as to avoid excessive compaction of overburden and to a thickness comparable to the root zone that existed in the soil before mining.

(5) Replace the A horizon or other suitable soil materials, which will create a final soil having an equal or greater productive capacity than existed prior to mining, as the final surface soil layer to the thickness of the original soil as determined in paragraph (g)(1)(i) of this section in a manner that—

(i) Prevents excess compaction of both the surface layer and underlying material and reduction of permeability to less than 0.06 inch per hour in the upper 20 inches of the reconstructed soil profile; and

(ii) Protects the surface layer from wind and water erosion before it is seeded or planted.

(6) Apply nutrients and soil amendments as needed to establish quick vegetative growth.

[42 FR 62691, Dec. 13, 1977; 43 FR 2722, Jan. 19, 1978, as amended at 46 FR 47529, Sept. 28, 1981; 46 FR 47721, Sept. 29, 1981]

§ 716.10 Information collection.

The information collection requirements contained in 30 CFR 716.7 (c), (d) and (e) have been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned clearance number 1029-0008. The information is being collected to implement section 510(d)(1) of Pub. L. 95-87 which authorizes mining on prime farmlands if the proposed permittee has the technological capability of restoring the land after mining and can meet certain soil reconstruction requirements. This information will be used by OSM to enforce the requirements of Pub. L. 95-87 mentioned above during the initial regulatory program. The obligation to respond is mandatory.

(30 U.S.C. 1201 *et seq.*)

[47 FR 33685, Aug. 4, 1982]

PART 717—UNDERGROUND MINING GENERAL PERFORMANCE STANDARDS

Sec.
717.10 Information collection.
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AUTHORITY: Secs. 201 and 501, Pub. L. 95-87, 91 Stat. 445 (30 U.S.C. 1201).

SOURCE: 42 FR 62695, Dec. 13, 1977, unless otherwise noted.

§ 717.10 Information collection.

The information collection requirements contained in 30 CFR 717.17(b) and 717.18(b) (2) and (6) have been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned clearance number 1029-0009. The information is being collected to meet the requirements of sections 515(b) (10) and (13) of Pub. L. 95-87. This information will be used to ensure compliance with statutory performance standards for the construction and operation of dams composed of waste materials and to minimize disturbance to the quality and quantity of surface water systems during the initial regulatory program. The obligation to respond is mandatory.

(30 U.S.C. 1201 *et seq.*)

[47 FR 33685, Aug. 4, 1982]

§ 717.11 General obligations.

(a) *Compliance.* All underground coal mining and associated reclamation operations conducted on lands where any element of the operations is regulated by a State shall comply with the initial performance standards of this part according to the time schedule specified in § 710.11.

(1) For the purposes of this part, *underground coal mining and associated reclamation operations* mean a combination of *surface operations* and *underground operations. Surface operations* include construction, use, and reclamation of new and existing access and haul roads, aboveground repair areas, storage areas, processing areas, shipping areas, and areas upon which are sited support facilities including hoist and ventilating ducts, and on which materials incident to underground mining operations are placed. *Underground operations* include underground construction, operation, and reclamation of shafts, adits, underground support facilities, underground mining, hauling, storage, and blasting.

(2) For the purpose of this part the term *permittee* means the person per-

mitted to conduct underground mining operations by a State or if no permit is issued in the State, the person operating a mine.

(3) For the purpose of this part, *Disturbed areas* means surface work areas and lands affected by surface operations including, but not limited to, roads, mine entry excavations, above ground (surface) work areas, such as tipples, coal processing facilities and other operating facilities, waste work and spoil disposal areas, and mine waste impoundments or embankments.

(4) Where State environmental protection standards are adopted for a specific State because they are more stringent than the standards of this part, they will be published in Part 718 of this chapter.

(b) *Authorizations to operate.* A copy of all current permits, licenses, approved plans or other authorizations to operate the mine shall be available for inspection at or near the mine site.

§ 717.12 Signs and markers.

(a) *Specifications.* All signs required to be posted shall be of a standard design that can be seen and read easily and shall be made of durable material, and shall conform to local ordinances and codes. The signs and other markers shall be maintained during all operations to which they pertain.

(b) *Mine and permit identification signs.* Signs identifying the mine area shall be displayed at all points of access to the permit area from public highways. Signs shall show the name, business address, and telephone number of the permittee and identification numbers of current mining and reclamation permits or other authorizations to operate. Such signs shall not be removed until after release of all bonds.

§ 717.13 [Reserved]

§ 717.14 Backfilling and grading of road cuts, mine entry area cuts, and other surface work areas.

(a) Upon completion of underground mining, surface work areas which are involved in excavation, disposal of materials, or otherwise affected, shall be regraded to approximate original contour. The permittee shall transport, backfill and compact fill material to assure stability or to prevent leaching of toxic pollutants. Barren rock or similar materials excess to the mining operations and which are disposed on the land surface shall be subject to the provision of § 717.15 of this part. Roads and support facility areas existing prior to the effective date of this part and used in support of underground mining operations which are subject to this part shall be regraded to the extent deemed feasible by the regulatory authority based on the availability of backfill material and resulting stability of the affected lands after reclamation. As a minimum, the permittee shall be required to:

(1) Retain all earth, rock and other mineral nonwaste materials on the solid portion of existing or new benches, except that the regulatory authority may permit placement of such material at the site of the faceup as a means of disposing of excavated spoil when additional working space is needed to facilitate operations. Such placement of material shall be limited to minimize disturbance of land and to the hydrologic balance. Such fills shall be stabilized with vegetation and shall achieve a minimum static safety factor of 1.5. In no case shall the outslope exceed the angle of repose.

(2) Backfill and grade to the most moderate slope possible to eliminate any highwall along roads, mine entry faces or other areas. Slopes shall not exceed the angle of repose or such lesser slopes as required by the regulatory authority to maintain stability.

(b) On approval by the regulatory authority and in order to conserve soil moisture, ensure stability, and control erosion on final graded slopes, cut-and-fill terraces may be allowed if the terraces are appropriate substitutes for construction of lower grades on the reclaimed lands. The terraces shall meet the following requirements:

(1) The width of the individual terrace bench shall not exceed 20 feet unless specifically approved by the regulatory authority as necessary for stability erosion control, or roads.

(2) The vertical distance between terraces shall be as specified by the regulatory authority to prevent exces-

sive erosion and to provide long/term stability.

(3) The slope of the terrace outslope shall not exceed 1*v*:2*h* (50 percent). Outslopes which exceed 1*v*:2*h* (50 percent) may be approved if they have a minimum static safety factor of 1.5 of more and provide adequate control over erosion and closely resemble the surface configuration of the land prior to mining. In no case may highwalls be left as part of terraces.

(4) Culverts and underground rock drains shall be used on the terrace only when approved by the regulatory authority.

(c) All surface operations on steep slopes of 20 degrees or more or on such lesser slopes as the regulatory authority define as a *steep slope* shall be conducted so as not to place any material on the downslope below road cuts, mine working or other benches, other than in conformance with paragraph (a) (1) of this part.

(d) *Regrading or stabilizing rills and gullies.* When rills or gullies deeper than 9 inches form in areas tht have been regraded and the topsoil replaced but vegetation has not yet been established, the permittee shall fill, grade, or otherwise stabilize the rills and gullies and reseed or replant the areas according to § 717.20. The regulatory authority shall specify that erosional features of lesser size be stabilized if they result in additional erosion and sedimentation.

(e) *Covering coal and acid-forming, toxic-forming, combustible, and other* waste materials; stabilizing backfilled materials; and using waste material for fill. Any acid-forming, toxic-forming, combustible materials, or any other waste materials as identified by the regulatory authority that are exposed, used, or produced during underground mining and which are deposited on the land surface shall, after placement in accordance with § 717.15 of this part, be covered with a minimum of 4 feet of nontoxic and noncombustible material; or, if necessary, treated to neutralize toxicity, in order to prevent water pollution and sustained combustion, and to minimize adverse effects on plant growth and land uses. Where necessary to protect against upward migration of salts, exposure by erosion, to provide an adequate depth for plant growth, or to otherwise meet local conditions, the regulatory authority shall specify thicker amount of cover using nontoxic material. Acid-forming or toxic-forming material shall not be buried or stored in proximity to a drainage course so as to cause or pose a threat of water pollution or otherwise violate the provisions of § 717.17 of this part.

(f) *Grading along the contour.* All final grading, preparation of earth, rock and other nonwaste materials before replacement of topsoil, and placement of topsoil in accordance with § 717.20, shall be done along the contour to minimize subsequent erosion and instability. If such grading, preparation or placement along the contour would be hazardous to equipment operators, grading, preparation or placement in a direction other than generally parallel to the contour may be used. In all cases, grading, preparation or placement shall be conducted in a manner which minimizes erosion and provides a surface for replacement of topsoil which will minimize slippage.

§ 717.15 Disposal of excess rock and earth materials on surface areas.

Excess rock and earth materials produced from an underground mine and not disposed in underground workings or used in backfilling and grading operations shall be placed in surface disposal areas in accordance with requirements of § 715.15. Where the volume of such material is small and its chemical and physical characteristics do not pose a threat to either public safety or the environment, the regulatory authority may modify the requirements of § 715.15 in accordance with § 717.14(a)(1).

§ 717.16 [Reserved]

§ 717.17 Protection of the hydrologic system.

The permittee shall plan and conduct underground coal mining and reclamation operations to minimize disturbance of the prevailing hydrologic balance in order to prevent long-term adverse changes in the hydrologic balance that could result from underground coal mining operations, both on and off site, changes in water quality and quantity, in the depth to ground water, and in the location of surface water drainage channels shall be minimized and applicable Federal and State statutes and regulations shall not be violated. The permittee shall conduct operations so as to minimize water pollution and shall, where necessary, use treatment methods to control water pollution. The permittee shall emphasize underground coal mining and reclamation practices that will prevent or minimize water pollution and changes in flows in preference to the use of water treatment facilities prior to discharge to surface waters. Practices to control and minimize pollution include, but are not limited to, diverting water from underground workings or preventing water contact with acid- or toxic-forming materials, and minimizing water contact time with waste materials, maintaining mine barriers to enhance postmining inundation and sealing, establishing disturbed areas through grading, diverting runoff, achieving quick growing stands of temporary vegetation, and lining drainage channels. If treatment is required to eliminate pollution of surface or ground waters, the permittee shall operate and maintain the necessary water treatment facilities as set forth in this section.

(a) *Water quality standards and effluent limitations.* (1) All surface drainage from the disturbed area, including disturbed areas that have been graded, seeded or planted and which remain subject to the requirements of this section, except for drainage from disturbed areas that have met the requirements of § 717.20 shall be passed through a sedimentation pond or a series of sedimentation ponds prior to leaving the permit area. All waters which flow or are removed from underground operations or underground waters which are removed from other areas to facilitate mining and which discharge to surface waters must be passed through appropriate treatment facilities prior to discharge where necessary to meet effluent limitations.

(2) For purposes of this section only, disturbed areas shall include areas of surface operations but shall not include those areas in which only diversion ditches, sedimentation ponds, or roads are installed in accordance with this section and the upstream area is not otherwise disturbed by the permittee. Disturbed areas shall not include those surface areas overlying the underground working unless those areas are also disturbed by surface operations such as fill (disposal) areas, support facilities areas, or other major activities which create a risk of pollution.

(3) The regulatory authority may grant exemptions from this requirement only when the disturbed drainage area within the total disturbed area is small and if the permittee shows that sedimentation ponds are not necessary to meet effluent limitations of this paragraph and to maintain water quality in downstream receiving waters. Sedimentation ponds required by this paragraph shall be constructed in accordance with paragraph (e) of this section in appropriate locations prior to any mining in the affected drainage area in order to control sedimentation or otherwise treat water in accordance with this paragraph. Discharges from areas disturbed by underground operation and by surface operation and reclamation activities conducted thereon, must meet all applicable Federal and State regulations and, at a minimum, the following numerical effluent limitations:

EFFLUENT LIMITATIONS, IN MILLIGRAMS PER LITER, MG/L EXCEPT FOR PH

Effluent characteristics	Maximum allowable[1]	Average of daily values for 30 consecutive discharge days[1]
Iron, total	7.0	3.5
Manganese, total	4.0	2.0
Total suspended solids[2]	70.0	35.0
pH[3]	(4)	(4)

[1] Based on representative sampling.

[2] In Arizona, Colorado, Montana, New Mexico, North Dakota, South Dakota, Utah, and Wyoming, total suspended solids limitations will be determined on a case-by-case basis, but they must not be greater than 45/mg/l (maximum allowable) and 30 mg/l (average of daily value for 30 consecutive discharge days) based on a representative sampling.

[3] Where the application of neutralization and sedimentation treatment technology results in inability to comply with the manganese limitations set forth, the regulatory authority may

(i) Any overflow or other discharge of surface water from the disturbed area within the permit area demonstrated by the permittee to result from a precipitation event larger than the 10-year 24-hour frequency event will not be subject to the effluent limitations of paragraph (a).

(ii) The permittee shall install, operate, and maintain adequate facilities to treat any water discharged from the disturbed area that violates applicable Federal or State regulations or the limitations of paragraph (a). If the pH of waters to be discharged from the disturbed area is normally less than 6.0, an automatic lime feeder or other neutralization process approved by the regulatory authority shall be installed, operated, and maintained. If the regulatory authority finds that small and infrequent treatment requirements to meet applicable standards do not necessitate use of an automatic neutralization process, and the mine normally produces less than 500 tons of coal per day, the regulatory authority can approve the use of a manual system if the permittee agrees to insure that consistent and timely treatment is carried out.

(iii) The effluent limitations for manganese shall be applicable only to acid drainage.

(b) *Surface water monitoring.* (1) The permittee shall submit for approval by the regulatory authority a surface water monitoring program which meets the following requirements:

(i) Provides adequate monitoring of all discharge from the disturbed area and from the underground operations.

(ii) Provides adequate data to describe the likely daily and seasonal variation in discharges from the disturbed area in terms of flow, pH, total iron, total manganese, and total suspended solids and, as requested by the regulatory authority, any other parameter characteristic of the discharge.

(iii) Provides monitoring at appropriate frequencies to measure normal and abnormal variations in concentration.

(iv) Provides an analytical quality control system including standard methods of analysis such as those specified in 40 CFR Part 136.

(v) Within sixty (60) days of the end of each sixty (60) day sample collection period, a report of all samples shall be made to the regulatory authority, unless the discharge for which water monitoring reports are required is subject to regulation by a National Pollution Discharge Elimination System (NPDES) permit issued in compliance with the Clean Water Act of 1977 (33 U.S.C. 1251–1378), (A) which includes equivalent reporting requirements, and (B) which requires filing of the water monitoring reports within 90 days or less of sample collection.

For such discharges, the reporting requirements of this paragraph may be satisfied by submitting to the regulatory authority on the same time schedule as required by the NPDES permit or within ninety (90) days following sample collection, whichever is earlier, either (*1*) a copy of the completed reporting form filed to meet the NPDES permit requirements, or (*2*) a letter identifying the State or Federal government official with whom the reporting form was filed to meet the NPDES permit requirements and the date of filing. In all cases in which analytical results of the sample collections indicate a violation of a permit condition or applicable standard has occurred, the operator shall notify the regulatory authority immediately. Where an NPDES permit effluent limitation requirement has been violated, the permittee should forward a copy of the Discharge Monitoring Report, EPA Form 3320-1, concurrently with notification of the violation.

(2) Equipment, structures, or other measures necessary to accurately measure and sample the quality and quantity of surface water discharges from the disturbed area of the permit area shall be properly installed, maintained and operated and shall be removed when no longer required.

(c) *Diversion and conveyance of overland flow away from disturbed areas.* In order to minimize erosion

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allow the pH level in the discharge to exceed to a small extent the upper limit of 9.0 in order that the manganese limitations will be achieved.

[4] Within the range 6.0 to 9.0

and to prevent or remove water from contacting toxic-producing deposits, overland flow from undisturbed areas may, as required or approved by the regulatory authority, be diverted away from disturbed areas by means of temporary or permanent diversion structures. The following requirements shall be met for such diversions:

(1) Temporary diversion structures shall be constructed to safely pass the peak runoff from a precipitation event with a one year recurrence interval, or a larger event as specified by the regulatory authority. The design criteria must assure adequate protection of the environment and public during the existence of the temporary diversion structure.

(2) Permanent diversion structures are those remaining after mining and reclamation and approved for retention by the regulatory authority and other appropriate State and Federal agencies. To protect fills and property, to prevent water from contacting toxic-producing deposits, and to avoid danger to public health and safety, permanent diversion structures shall be constructed to safely pass the peak runoff from a precipitation event with a 100-year recurrence interval or a larger event as specified by the regulatory authority. Permanent diversion structures shall be constructed with gently sloping banks that are stabilized by vegetation. Asphalt, concrete, or other similar linings shall not be used unless specifically required to prevent seepage or to provide stability and they are approved by the regulatory authority.

(3) Diversions shall be designed, constructed, and maintained in a manner so as to prevent additional contributions of suspended solids to streamflow, or to runoff outside the permit area to the extent possible, using the best technology currently available. In no event shall such contributions be in excess of requirements set by applicable State or Federal law. Appropriate sediment control measures for these diversions shall include, but not be limited to, maintenance of appropriate gradients, channel lining, vegetation, and roughness structures and detention basins.

(d) *Stream channel diversions.* In the event that the regulatory authority permits diversion of streams, the regulations of § 715.17(d) shall apply.

(e) *Sedimentation ponds*—(1) *General requirements.* Sedimentation ponds shall be used individually or in series and shall:

(i) Be constructed before any disturbance of the undisturbed area to be drained into the pond and prior to any discharge of water to surface waters from underground mine workings;

(ii) Be located as near as possible to the disturbed area and out of perennial streams, unless approved by the regulatory authority,

(iii) Meet all the criteria of the section.

(2) *Sediment storage volume.* Sedimentation ponds shall provide a minimum sediment storage volume.

(3) *Detention time.* Sedimentation ponds shall provide the required theoretical detention time for the water inflow or runoff entering the pond from a 10-year, 24-hour precipitation event (design event), plus the average inflow from the underground mine.

(4) *Dewatering.* The water storage resulting from inflow shall be removed by a nonclogging dewatering device or a conduit spillway approved by the regulatory authority. The dewatering device shall not be located at a lower elevation than the maximum elevation of the sedimentation storage volume.

(5) Each person who conducts underground mining activities shall design, construct, and maintain sedimentation ponds to prevent short-circuiting to the extent possible.

(6) The design, construction, and maintenance of a sedimentation pond or other sediment control measures in accordance with this section shall not relieve the person from compliance with applicable effluent limitations as contained in paragraph (a) of this section.

(7) There shall be no out-flow through the emergency spillway during the passage of the runoff resulting from the 10-year, 24-hour precipitation events and lesser events through the sedimentation pond, regardless of the volume of water and sediment present from the underground mine during the runoff.

(8) Sediment shall be removed from sedimentation ponds.

(9) An appropriate combination of principal and emergency spillways shall be provided to discharge safely the runoff from a 25-year, 24-hour precipitation event, or larger event specified by the regulatory authority, plus any inflow from the underground mine. The elevation of the crest of the emergency spillway shall be a Minimum of 1.0 foot above the crest of the principal spillway. Emergency spillway grades and allowable velocities shall be approved by the regulatory authority.

(10) The minimum elevation of the top of the settled embankment shall be 1.0 foot above the water surface in the pond with the emergency spillway flowing at design depth. For embankments subject to settlement, this 1.0 foot minimum elevation requirement shall apply at all times, including the period after settlement.

(11) The constructed height of the dam shall be increased a minimum of 5 percent over the design height to allow for settlement, unless it has been demonstrated to the regulatory authority that the material used and the design will ensure against all settlement.

(12) The minimum top width of the embankment shall not be less than the quotient of $(H+35)/5$, where H, *in feet*, is the height of the embankment as measured from the upstream toe of the embankment.

(13) The combined upstream and downstream side slopes of the settled embankment shall not be less than $1v{:}5h$, with neither slope steeper than $1v{:}2h$. Slopes shall be designed to be stable in all cases, even if flatter side slopes are required.

(14) The embankment foundation area shall be cleared of all organic matter, all surfaces sloped to no steeper than $1v{:}1h$, and the entire foundation surface scarified.

(15) The fill material shall be free of sod, large roots, other large vegetative matter, and frozen soil, and in no case shall coal-processing waste be used.

(16) The placing and spreading of fill material shall be started at the lowest point of the foundation. The fill shall be brought up in horizontal layers of such thickness as is required to facilitate compaction and meet the design requirement of this section. Compaction shall be conducted as specified in the design approved by the regulatory authority.

(17) If a sedimentation pond has an embankment that is more than 20 feet in height, as measured from the upstream top of the embankment to the crest of the emergency spillway, or has a storage volume of 20 acre-feet or more, the following additional requirements shall be met:

(i) An appropriate combination of principal and emergency spillways shall be provided to safely discharge the runoff resulting from a 100-year, 24-hour precipitation event, or a larger event specified by the regulatory authority, plus any in-flow from the underground mine.

(ii) The embankment shall be designed and constructed with an acceptable static safety factor of at least 1.5, or a higher safety factor as designated by the regulatory authority to ensure stability.

(iii) Appropriate barriers shall be provided to control seepage along conduits that extend through the embankment.

(iv) The criteria of the Mine Safety and Health Administration as published in 30 CFR 77.216 shall be met.

(18) Each pond shall be designed and inspected during construction under the supervision of, and certified after construction by, a registered professional engineer.

(19) The entire embankment including the surrounding areas disturbed by construction shall be stabilized with respect to erosion by a vegetative cover or other means immediately after the embankment is completed. The active upstream face of the embankment where water is being impounded may be riprapped or otherwise stabilized. Areas in which the vegetation is not successful or where rills and guillies develop shall be repaired and revegetated, in accordance with § 717.20.

(20) All ponds, including those not meeting the size or other criteria of 30 CFR 77.216(a), shall be examined for structural weakness, erosion, and other hazardous conditions and reports and notifications shall be made

to the regulatory authority, in accordance with 30 CFR 77.216-3. With the approval of the regulatory authority, dams not meeting these criteria (30 CFR 77.216(a)) shall be examined four times per year.

(21) Sedimentation ponds shall not be removed until the disturbed area has been restored and the vegetation requirements of § 715.20 are met and the drainage entering the pond has met the applicable State and Federal water quality requirements for the receiving stream. When the sedimentation pond is removed, the affected land shall be regraded and revegetated in accordance with §§ 717.14 and 717.20, unless the pond has been approved by the regulatory authority for retention as compatible with the approved post-mining land use paragraph (k) of this section. If the regulatory authority approves retention, the sedimentation pond shall meet all the requirements for permanent impoundments of paragraph (k).

(22) (i) Where surface mining activities are proposed to be conducted on steep slopes, as defined in § 716.2 of this chapter, special sediment control measures may be followed if the person has demonstrated to the regulatory authority that a sedimentation pond (or series of ponds) constructed according to paragraph (e) of this section—

(A) Will jeopardize public health or safety; or

(B) Will result in contributions of suspended solids to streamflow in excess of the incremental sediment volume trapped by the additional pond size required.

(ii) Special sediment control measures shall include but not be limited to—

(A) Designing, constructing, and maintaining a sedimentation pond as near as physically possible to the disturbed area which complies with the design criteria of this section to the maximum extent possible.

(B) A plan and commitment to employ sufficient onsite sedimentation control measures including bench sediment storage, filtration by natural vegetation, mulching, and prompt revegetation which, in conjunction with the required sediment pond, will achieve and maintain applicable effluent limitations. The plan submitted pursuant to this paragraph shall include a detailed description of all onsite control measures to be employed, a quantitative analysis demonstrating that onsite sedimentation control measures, in conjunction with the required sedimentation pond, will achieve and maintain applicable effluent limitations, and maps depicting the location of all onsite sedimentation control measures.

(f) *Discharge structures.* Discharges from sedimentation ponds and diversion structures shall be controlled, where necessary, using energy dissipators, surge ponds, and other devices to reduce erosion and prevent deepening or enlargement of stream channels and to minimize disturbances to the hydrologic balance.

(g) *Acid and toxic materials.* Drainage to ground and surface waters which emanates from acid-forming or toxic-forming mine waste materials and spoils placed on the land surface shall be avoided by—

(1) Identifying, burying, and treating where necessary, spoil or other materials that, in the judgment of the regulatory authority, will be toxic to vegetation or that will adversely affect water quality if not treated or buried. Such material shall be disposed in accordance with the provision of § 717.14(e);

(2) Preventing or removing water from contact with toxic-producing deposits;

(3) Burying or otherwise treating all toxic or harmful materials within 30 days if such materials are subject to wind and water erosion, or within a lesser period designated by the regulatory authority. If storage of such materials is approved, the materials shall be placed on impermeable material and protected from erosion and contact with surface water. Coal waste ponds and other coal waste materials shall be maintained according to paragraph (g)(4) of this section and § 717.18 shall apply;

(4) Burying or otherwise treating waste materials from coal preparation plants no later than 90 days after the cessation of the filling of the disposal area. Burial or treatment shall be in

accordance with § 717.14(e) of this part;

(5) Casing, sealings, or otherwise managing boreholes, shafts, wells, and auger holes or other more or less horizontal holes to prevent pollution of surface or ground water and to prevent mixing of ground waters of significantly different quality. All boreholes that are within the permit area but are outside the surface coal mining area or which extend beneath the coal to be mined and into water-bearing strata shall be plugged permanently in a manner approved by the regulatory authority, unless boreholes have been approved for use in monitoring.

(h) *Ground water systems.* (1) Underground operations shall be conducted to minimize adverse effects on ground water flow and quality, and to minimize offsite effects. The permittee will be responsible for performing monitoring according to paragraph (h)(2) of this section to ensure operations conform to this requirement.

(2) Ground water levels, subsurface flow and storage characteristics, and the quality of ground water shall be monitored in a manner approved by the regulatory authority to determine the effects of underground coal mining operations on the quantity and quality of water in ground water systems at the mine area and in associated offsite areas. When operations are conducted in such a manner that may affect the ground water system, ground water levels and ground water quality shall be periodically monitored using wells which can adequately reflect changes in ground water quantity and quality resulting from such operations. Sufficient water wells must be used by the permittee. The regulatory authority may require drilling and development of additional wells if needed to adequately monitor the ground water system. As specified and approved by the regulatory authority, additional hydrologic tests, such as aquifer tests, must be undertaken by the permittee to demonstrate compliance with paragraph (h)(1) of this section.

(i) *Water rights and replacement.* The permittee shall replace the water supply of an owner of interest in real property who obtains all or part of his supply of water for domestic, agricultural, industrial, or other legitimate use from an underground or surface source where such supply has been affected by contamination, diminution, or interruption proximately resulting from surface coal mine operation by the permittee.

(j) *Hydrologic impact of roads.* (1) *General.* Access and haul roads and associated bridges, culverts, ditches, and road rights-of-way shall be constructed, maintained, and reclaimed so as to the extent possible, using the best technology currently available, prevent additional contributions of suspended solids to streamflow, or to runoff outside the permit area to the extent possible, using the best technology currently available. In no event shall the contributions be in excess of requirements set by applicable State or Federal law. All haul and access roads shall be removed and the land affected shall be regraded and revegetated consistent with the requirements of §§ 717.14 and 717.20, unless retention of a road is approved and assured of necessary maintenance to adequately control erosion.

(2) *Construction.* (i) All roads, insofar as possible, shall be located on ridges or on flatter and more stable slopes to minimize erosion. Stream fords are prohibited unless they are specifically approved by the regulatory authority as temporary routes across dry streams that will not adversely affect sedimentation and that will not be used for coal haulage. Other stream crossings shall be made using bridges, culverts, or other structures designed and constructed to meet the requirements of this paragraph. Roads shall not be located in active stream channels nor shall they be constructed or maintained in a manner that increases erosion or causes significant sedimentation or flooding. However, nothing in this paragraph will be construed to prohibit relocation of stream channels in accordance with paragraph (d) of this section.

(ii) In order to minimize erosion and subsequent disturbances of the hydrologic balance, roads shall be constructed in compliance with the following grade restrictions or other grades determined by the regulatory authority to be necessary to control erosion:

(A) The overall sustained grade shall not exceed 1*v*:10*h* (10 percent).

(B) The maximum grade greater than 10 percent shall not exceed 1*v*:6.5*h* (15 percent) for more than 300 feet.

(C) There shall not be more than 300 feet of grade exceeding 10 percent within each 1,000 feet.

(iii) All access and haul roads shall be adequately drained using structures such as, but not limited to, ditches, water barriers, cross drains, and ditch relief drains. For access and haul roads that are to be maintained for more than 1 year, water-control structures shall be designed with a discharge capacity capable of passing the peak runoff from a 10-year, 24-hour precipitation event. Drainage pipes and culverts shall be constructed to avoid plugging or collapse and erosion at inlets and outlets. Drainage ditches shall be provided at the toe of all cut slopes formed by construction of roads. Trash racks and debris basis shall be installed in the drainage ditches wherever debris from the drainage area could impair the functions of drainage and sediment control structures. Ditch relief and cross drains shall be spaced according to grade. Effluent limitations of paragraph (a) of this section shall not apply to drainage from access and haul roads located outside the disturbed area as defined in this section unless otherwise specified by the regulatory authority.

(iv) Access and haul roads shall be surfaced with durable material. Toxic- or acid-forming substances shall not be used. Vegetation may be cleared only for the essential width necessary for road and associated ditch construction and to serve traffic roads.

(3) *Maintenance.* (i) Access and haul roads shall be routinely maintained by means such as, but not limited to, wetting, scraping, or surfacing.

(ii) Ditches, culverts, drains, trash racks, debris basins, and other structures serving to drain access and haul roads shall not be restricted or blocked in any manner that impedes drainage or adversely affects the intended purpose of the structure.

(4) Access roads constructed for and used only to provide infrequent service to surface facilities, such as ventilators or monitoring devices shall be exempt from the requirements of paragraph (j)(2) of this section provided adequate stabilization to control erosion is achieved through use of alternative measures.

(k) *Hydrologic impacts of other transport facilities.* Railroad loops, spurs, conveyors, or other transport facilities shall be constructed, maintained, and reclaimed to prevent additional contributions of suspended solids to streamflow, or to runoff outside the permit area to the extent possible, using the best technology currently available and to control other diminution or degradation of water quality and quantity. In no event shall contributions be in excess of requirements set by applicable State or Federal law.

(l) *Discharge of waters into underground mines.* Surface and ground waters shall not be discharged or diverted into underground mine workings.

(Secs. 101, 102, 201, 501, 503-510, 515-517, 523, and 701, Surface Mining Reclamation Act of 1977, Pub. L. 95-87 (30 U.S.C. 1201, 1202, 1211, 1251-1260, 1265-1267, 1273, 1291))

[42 FR 62695, Dec. 13, 1977, as amended at 43 FR 8092, Feb. 27, 1978; 43 FR 21459, May 18, 1978; 44 FR 30632, May 25, 1979; 44 FR 36887, June 22, 1979; 44 FR 77452, Dec. 31, 1979]

EDITORIAL NOTE: A document published at 44 FR 77452, Dec. 31, 1979 temporarily suspended § 717.17(a)(3)(i) insofar as it applies to total suspended solids (TSS) discharges.

§ 717.18 Dams constructed of or impounding waste material.

(a) *General.* No waste material shall be used in or impounded by existing or new dams without the approval of regulatory authority. The permittee shall design, locate, construct, operate, maintain, modify, and abandon or remove all dams (used either temporarily or permanently) constructed of waste materials, in accordance with the requirements of this section.

(b) *Construction of dams.* (1) Waste shall not be used in the construction of dams unless demonstrated through appropriate engineering analysis, to have no adverse effect on stability.

(2) Plans for dams subject to this section, and also including those dams that do not meet the size or other criteria of § 77.216(a) of this title, shall be approved by the regulatory authority before construction and shall contain the minimum plan requirements established by the Mining Enforcement and Safety Administration pursuant to § 77.216-2 of this title.

(3) Construction requirements are as follows: (i) Design shall be based on the flood from the probable maximum precipitation event unless the permittee shows that the failure of the impounding structure would not cause loss of life or severely damage property or the environment, in which case, depending on site conditions, a design based on a precipitation event of no less than 100-year frequency may be approved by the regulatory authority.

(ii) The design freeboard distance between the lowest point on the embankment crest and the maximum water elevation shall be at least 3 feet to avoid overtopping by wind and wave action.

(iii) Dams shall have minimum safety factors as follows:

Case	Loading condition	Minimum safety factor
I	End of construction	1.3
II	Partial pool with steady seepage saturation.	1.5
III	Steady seepage from spillway or decant crest.	1.5
IV	Earthquake (cases II and III with seismic loading).	1.0

(iv) The dam, foundation, and abutment shall be stable under all conditions of construction and operation of the impoundment. Sufficient foundation investigations and laboratory testing shall be performed to determine the factors of safety of the dam for all loading conditions in paragraph (b)(3)(iii) of this section and for all increments of construction.

(v) Seepage through the dam, foundation, and abutments shall be controlled to prevent excessive uplift pressures, internal erosion, sloughing, removal of material by solution, or erosion of material by loss into cracks, joints, and cavities. This may require the use of impervious blankets, pervious drainage zones or blankets, toe drains, relief wells, or dental concreting of jointed rock surface in contact with embankment materials.

(vi) Allowances shall be made for settlement of the dams and the foundation so that the freeboard will be maintained.

(vii) Impoundments created by dams of waste materials shall be subject to a minimum drawdown criteria that allows the facility to be evacuated by spillways or decants of 90 percent of the volume of water stored during the design precipitation event within 10 days.

(viii) During construction of dams subject to this section, the structures shall be periodically inspected by a registered professional engineer to ensure construction according to the approved design. On completion of construction, the structure shall be certified by a registered professional engineer experienced in the field of dam construction as having been constructed in accordance with accepted professional practice and the approved design.

(ix) A permanent identification marker, at least 6 feet high that shows the dam number assigned pursuant to § 77.216-1 of this title and the name of the person operating or controlling the dam, shall be located on or immediately adjacent to each dam within 30 days of certification of design pursuant to this section.

(4) All dams including those not meeting the size or other criteria of § 77.216(a) of this title, shall be routinely inspected by a registered professional engineer, or someone under the supervision of a registered professional engineer, in accordance with Mining Enforcement, and Safety Administration regulations pursuant to § 77.216-3 of this title.

(5) All dams shall be routinely maintained. Vegetative growth shall be cut where necessary to facilitate inspection and repairs. Ditches and spillways shall be cleaned. Any combustible materials present on the surface, other than that used for surface stability such as mulch or dry vegetation, shall

be removed and any other appropriate maintenance procedures followed.

(6) All dams subject to this section shall be recertified annually as having been constructed and modified in accordance with current prudent enginnering practices to minimize the possibility of failures. Any changes in the geometry of the impounding structure shall be highlighted and included in the annual recertification report. These certifications shall include a report on existing and required monitoring procedures and instrumentation, the average and maximum depths and elevations of any impounded waters over the past year, existing storage capacity of impounding structures, any fires occurring in the material over the past year and any other aspects of the structures affecting their stability.

(7) Any enlargements, reductions in size, reconstruction or other modification of the dams shall be approved by the regulatory authority before construction begins.

(8) All dams shall be removed and the disturbed areas regraded, revegetated, and stabilized before the release of bond unless the regulatory authority approves retention of such dams as being compatible with an approved postmining land use (§ 715.13).

§ 717.19 [Reserved]

§ 717.20 Topsoil handling and revegetation.

(a) Topsoil shall be removed as a separate operation from areas to be disturbed by surface operations, such as roads and areas upon which support facilities are to be sited. Selected overburden materials may be used instead of, or as a substitute for topsoil where the resulting soil medium is determined by the regulatory authority to be equal to or more suitable for revegetation. Topsoil shall be segregated, stockpiled, and protected from wind and water erosion, or contaminants. Disturbed areas no longer required for the conduct of mining operations shall be regraded, topsoil distributed, and revegetated.

(b) The permittee shall establish on all land that has been disturbed by mining operations a diverse, effective, and permanent vegetative cover capable of self-regeneration and plant succession, and adequate to control soil erosion. Introduced species may be substituted for native species if approved by the regulatory authority. Introduced species shall meet applicable State and Federal seed or introduced species statutes, and may not include poisonous or potentially toxic species.

PART 718—ADOPTION OF STATE STANDARDS

Sec.
718.1 Procedures for adoption.
718.10 Information collection.

§ 718.1 Procedures for adoption.

(a) Any State law or regulation which is determined by the Secretary under the procedures in this section to be a more stringent performance standard for regulation of surface coal mining and reclamation operations than that provided under a performance standard in Parts 715, 716, or 717 of this chapter shall be adopted by the Secretary and applied in that State instead of the requirements of the standards in Parts 715, 716, or 717.

(b) A State may request the Secretary to review the provisions of any State law or regulation to determine whether such law or regulation provides a more stringent performance standard than comparable provisions in Parts 715, 716, or 717 of this chapter. No particular form of request is required. However, the request shall be in writing and shall include the text of the State law or regulation identification of the comparable performance standard in Parts 715, 716, or 717 of this chapter, and an analysis of the reasons why the State law or regulation is a more stringent standard.

(c) If the Secretary determines that the requirements of State law or regulation may be more stringent than the comparable performance standard in Parts 715, 716, or 717 of the chapter, rulemaking shall be initiated under the procedures of section 501 of the Act for adoption of the standard.

(Secs. 201 and 501, Pub. L. 95-87, 91 Stat. 445 (30 U.S.C. 1201))

[42 FR 62700, Dec. 13, 1977]

§ 718.10 Information collection.

Since the information collection requirement contained in 30 CFR 718.1(b) has fewer than 10 respondents per year, it is exempt from the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) and does not require clearance by OMB.

(30 U.S.C. 1201 *et seq.*)

[47 FR 33685, Aug. 4, 1982]

PART 720—STATE ENFORCEMENT ACTIVITIES

Sec.
720.10 Information collection.
720.11 Enforcement authority.
720.12 Permits.
720.13 Reporting obligations.

AUTHORITY: Secs. 201, 501, and 502, Pub. L. 95-87, 91 Stat. 445 (30 U.S.C. 1201).

SOURCE: 42 FR 62700, Dec. 13, 1977, unless otherwise noted.

§ 720.10 Information collection.

The information collection requirement contained in 30 CFR 720.13 has fewer than 10 respondents per year, it is exempt from the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) and does not require clearance by OMB.

(30 U.S.C. 1201 *et seq.*)

[47 FR 33685, Aug. 4, 1982]

§ 720.11 Enforcement authority.

Nothing in the Act or these regulations shall be interpreted to preclude a State from exercising its authority to enforce State law, regulations, and permit conditions, unless compliance with the State law, regulations, or permit condition will preclude complaince with these regulations.

§ 720.12 Permits.

(a) On or after February 4, 1978, if a State is enforcing the performance standards of this chapter that State shall incorporate terms in initial permits that comply with those standards.

(b) On or after May 4, 1978, if a State is enforcing the performance standards of this chapter, that State shall incorporate terms in revised or renewed permits that comply with these standards.

§ 720.13 Reporting obligations.

(a) During the initial regulatory program, each State regulatory authority shall submit to the Office, within 5 days after its completion, a copy of each State report which contains observations of the condition of the mine site and relates to the obligations imposed by these regulations. In order to protect preparation for hearings and enforcement proceedings, the Director and the State regulatory authority may enter into agreements as to procedures for the special handling of investigative and enforcement reports and other materials.

(b) Any State issuing an initial permit to conduct surface coal mining operations on or after February 4, 1978, and a revised or renewed permit on or after May 4, 1978, shall submit a copy of the application and the permit to the Office.

PART 721—FEDERAL INSPECTIONS

Sec.
721.11 Extent.
721.12 Right of entry.
721.13 Inspections based on citizen requests.
721.14 Failure to give notice and lack of reasonable belief.

AUTHORITY: Sec. 201, 501, and 502, Pub. L. 95-87, 91 Stat. 445 (30 U.S.C. 1201).

SOURCE: 42 FR 62700, Dec. 13, 1977, unless otherwise noted.

§ 721.11 Extent.

The authorized representative of the Secretary shall conduct inspections of surface coal mining and reclamation operations subject to regulation under the Act—

(a) On the basis of not less than two consecutive State inspection reports indicating a violation of the Act, regulations or permit conditions required by the Act;

(b) On the basis of information provided by a State or any person which gives rise to a reasonable belief that the provisions of the Act, regulations or permit conditions required by the Act are being violated, or that a condition or practice exists which creates an imminent danger to the health or safety of the public, or is causing or can reasonably be expected to cause significant, imminent environmental harm to land, air, or water resources; and

(c) On a random basis of at least one complete inspection each 6 months. A complete inspection is an onsite review of the operator's compliance with all applicable standards in these regulations within the entire area disturbed or affected by mining.

§ 721.12 Right of entry.

(a) Authorized representatives of the Secretary, without advance notice and upon presentation of appropriate credentials and without a search warrant, shall have the right of entry to, upon, or through any surface coal mining and reclamation operations or any premises in which any records required to be maintained are located.

(b) The authorized representatives may at reasonable times, and without delay, have access to and copy any records, and inspect any monitoring equipment or method of operation required under this Act, the regulations or the permit.

§ 721.13 Inspections based on citizen requests.

(a) *Citizens reports.* (1) Any person who believes that there is a violation of the Act, regulations or permit conditions rquired by the Act or that any imminent danger or harm exists may report this information to the Office of Surface Mining Reclamation and Enforcement. Written reports must be signed and include a phone number where the reporting party can be contacted. Oral reports will be accepted but must be followed by a written and signed statement including the information reported. The complaint or other information shall be considered as having a reasonable basis if it alleges facts which, if proven to be true, would be sufficient to show a violation of the Act, regulations or permit. Unless the Office has reason to believe that the information is incorrect, or determines that even if true it would not constitute a violation, the Office shall conduct an inspection within 15 days of receipt of the complaint. If the complaint alleges an imminent danger or harm, the inspection shall be conducted promptly.

(2) The identity of any person supplying information to the Office relating to possible violations or imminent dangers or harms shall remain confidential with the Office, if requested by the person supplying the information, unless disclosure is required under the Freedom of Information Act (5 U.S.C. 552) or by other Federal law.

(b) *Right to accompany the authorized representative of the Secretary.* (1) If a Federal inspection is conducted as a result of information provided to the Office, the person who provided the information shall be notified when the inspection is to occur and the person will be allowed to accompany the authorized representative of the Secretary during the inspection.

(2) Any person accompanying an authorized representative of the Secretary has a right of entry to, upon and through the mining and reclamation operations about which he supplied information, only if he is in the presence of and is under the control, direction and supervision of the authorized representative while on the mine property.

(c) *Notification of results of investigation.* Within 10 days of the inspection or, if no inspection, within 15 days of the complaint, the Office shall notify the person in writing of the following—

(1) The results of the investigation, including a description of any inspection which occurred and any enforcement action taken; copies of Federal inspection reports, notices of violation, and cessation orders may be forwarded to the person in satisfaction of this requirement;

(2) If no inspection was conducted, an explanation of the reason for not inspecting;

(3) A statement as to the person's right to informal review of the actions or inactions of the Office.

(4) The permittee shall receive copies of all such reports which have not already been given to the permittee, except that the name of the complainant shall be removed.

(d) *Review of action of local offices.* A person who does not agree with the action taken by the Office on their report may request the Regional Director to review the complaint and actions taken. The Regional Director shall advise the person in writing, within 30 days of the results of the review. Informal review under this subsection shall not affect any rights to formal review or a citizen's suit.

§ 721.14 Failure to give notice and lack of reasonable belief.

No notice of violation or cessation order may be vacated by reason of failure to give notice required by the Act or these regulations prior to the inspection; or by reason of a subsequent determination that prior to the inspection the Office did not have information sufficient to create a reasonable belief that a violation had occurred.

PART 722—ENFORCEMENT PROCEDURES

Sec.

722.1 Scope.
722.11 Imminent dangers and harms.
722.12 Non-imminent dangers or harms.
722.13 Failure to abate.
722.14 Service of notices of violation, cessation orders, and orders to show cause.
722.15 Informal public hearing.
722.16 Pattern of violations.
722.17 Inability to comply.

AUTHORITY: Secs. 201, 501, and 502, Pub. L. 95-87, 91 Stat. 445 (30 U.S.C. 1201).

SOURCE: 42 FR 62701, Dec. 13, 1977, unless otherwise noted.

§ 722.1 Scope.

The regulations of this part set forth general procedures governing issuance of orders of cessation, notices of violation, and orders to show cause under section 521 of the Act.

§ 722.11 Imminent dangers and harms.

(a) If an authorized representative of the Secretary finds conditions or practices, or violations of any requirement of the Act, or any requirement of this chapter applicable during the interim regulatory program, which create an imminent danger to the health or safety of the public, the authorized representative shall immediately order a cessation of surface coal mining and reclamation operations or that portion of the operation relevant to the condition, practice, or violation.

(b) If an authorized representative of the Secretary finds conditions or practices, or violations of any requirement of the Act, or any requirement of this chapter applicable during the interim regulatory program, which are causing, or can reasonably be expected to cause, significant, imminent environmental harm to land, air, or water resources, the authorized representative shall immediately order a cessation of surface coal mining and reclamation operations or that portion of the operation relevant to the condition, practice, or violation.

(c) Surface coal mining and reclamation operations conducted by any person without a valid surface coal mining permit required by this Subchapter constitute a condition or practice which causes or can reasonably be expected to cause significant, imminent environmental harm to land, air or water resources, unless such operations are an integral, uninterrupted extension of previously permitted operations, and the person conducting such operations has filed a timely and complete application for a permit to conduct such operations.

(d) An authorized representative of the Secretary shall impose affirmative obligations on an operator which the authorized representative deems necessary to abate the condition, practice, or violation if—

(1) A cessation order is issued under paragraph (a) or (b) of this section; and

(2) The cessation of mining or reclamation activities will not completely abate the imminent danger or harm or eliminate the practices or conditions that contributed to the imminent danger or harm.

(e) When imposing affirmative obligations under this section, the authorized representative of the Secretary shall require abatement of the imminent danger or harm in the most expeditious manner physically possible. The affirmative obligation shall include a time by which abatement shall be accomplished and may include, among other things, the use of existing or additional personnel and equipment.

(f) Reclamation operations not directly the subject of the order or affirmative obligation shall continue during any cessation order.

(g) An authorized representative of the Secretary shall terminate a cessation order issued under paragraph (a) or (b) of this section by written notice when the authorized representative determines that the conditions or practices or violations that contributed to the imminent danger to life or the environment have been eliminated.

[42 FR 62701, Dec. 13, 1977, as amended at 45 FR 67501, Oct. 10, 1980; 47 FR 18558, Apr. 29, 1982]

§ 722.12 Non-imminent dangers or harms.

(a) If an authorized representative of the Secretary finds conditions or practices, or violations of any requirement of the Act, or of any requirement of this chapter applicable during the interim regulatory program, but such violations do not create an imminent danger to the health or safety of the public, or are not causing and cannot reasonably be expected to cause significant, imminent environmental harm to land, air, or water resources, the authorized representative shall issue a notice of violation fixing a reasonable time for abatement.

(b) An authorized representative of the Secretary may extend the time to abate a violation by written notice if the failure to abate within the time set was not caused by the permittee's lack of diligence.

(c) An authorized representative of the Secretary may establish interim steps in an abatement period. If the permittee fails to meet any interim step within the time set, the authorized representative may extend the time set for meeting the interim step, in accordance with this section, or may issue a cessation order pursuant to § 722.13 of this part.

(d) The total time for abatement as originally fixed and subsequently extended shall not exceed 90 days except upon a showing by the permittee that it is not feasible to abate the violation within 90 calendar days due to one or more of the circumstances in § 722.12(e). An extended abatement date pursuant to this section shall not be granted when the permittee's failure to abate within 90 days has been caused by a lack of diligence or intentional delay by the permittee in completing the remedial action required.

(e) Circumstances which may qualify a surface coal mining operation for an abatement period of more than 90 days are:

(1) where the permittee of an ongoing permitted operation has timely applied for and diligently pursued a permit renewal or other necessary approval of designs or plans but such permit or approval has not been or will not be issued within 90 days after a valid permit expires or is required, for reasons not within the control of the permittee;

(2) where there is a valid judicial order precluding abatement within 90 days as to which the permittee has diligently pursued all rights of appeal and as to which he or she has no other effective legal remedy;

(3) where the permittee cannot abate within 90 days due to a labor strike;

(4) where climatic conditions preclude abatement within 90 days, or where, due to climatic conditions, abatement within 90 days clearly:

(i) would cause more environmental harm than it would prevent; or

(ii) requires action that would violate safety standards established by statute or regulation under the Mine Safety and Health Act.

(f) Whenever an abatement time in excess of 90 days is permitted, interim abatement measures shall be imposed to the extent necessary to minimize harm to the public or the environment.

(g) If any of the conditions in paragraphs (e) (1) through (4) exist, the permittee may request the authorized representative to grant an abatement period exceeding 90 days. The authorized representative shall not grant such an abatement period without the concurrence of the Director or his or her designee and the abatement period granted shall not exceed the shortest possible time necessary to abate the violation. The permittee shall have the burden of establishing by clear and convincing proof that he or she is entitled to an extension under the provisions of § 722.12 (d) and (e). In determining whether or not to grant an abatement period exceeding 90 days the authorized representative may consider any relevant written or oral information from the permittee or any other source. The authorized representative shall promptly and fully document in the file his or her reasons for granting or denying the request. The inspector's immediate supervisor shall review this document before concurring in or disapproving the extended abatement date and shall promptly and fully document the reasons for his or her concurrence or disapproval in the file.

(h) Any determination made under paragraph (g) shall be in writing and shall contain a right of appeal to the Office of Hearings and Appeals in accordance with 43 CFR 4.1281 and the regulations at 43 CFR Part 4.

(i) No extension granted under paragraph (b) may exceed 90 days in length. Where the condition or circumstance which prevented abatement within 90 days exists at the expiration of any such extension, the permittee may request a further extension in accordance with the procedures of paragraph (g).

[42 FR 62701, Dec. 13, 1977; 43 FR 2722, Jan. 19, 1978, as amended at 45 FR 67501, Oct. 10, 1980; 46 FR 41704, Aug. 17, 1981]

§ 722.13 Failure to abate.

An authorized representative of the Secretary shall order cessation of surface coal mining and reclamation operations, or the portion relevant to the violation, when a notice of violation has been issued under § 722.12 of this part and the permittee fails to abate the violation within the time originally fixed or subsequently extended. In a cessation order issued under this section, the authorized representative shall impose affirmative obligations to abate the violation in the manner provided in § 722.11 of this part. Reclamation operations not directly the subject of the order or affirmative obligation shall continue during any cessation order. A cessation order issued under this section shall be terminated as provided in § 722.11 of this part.

§ 722.14 Service of notices of violation, cessation orders, and orders to show cause.

(a) A notice of violation or cessation order shall be served on the person to whom it is directed or his designated agent promptly after issuance, as follows:

(1) By tendering a copy at the surface coal mining and reclamation operation to the designated agent or to the person to whom it is directed. If no such agent is reasonably available, a copy may be tendered to the individual who, based upon reasonable inquiry by the authorized representative, appears to be in charge of the surface coal mining and reclamation operation referred to in the notice or order. If no such individual can be located at the site, a copy may be tendered to any individual at the site who appears to be an employee or agent of the person to whom the notice or order is issued. Service shall be complete upon tender of the notice or order and shall not be deemed incomplete because of refusal to accept.

(2) As an alternative to paragraph (a)(1) of this section, service may be made by sending a copy of the notice or order by certified mail or by hand to the person to whom it is issued or his designated agent. Service shall be complete upon tender of the notice or order or of the mail and shall not be deemed incomplete because of refusal to accept.

(b) A show cause order, or a vacation, modification or termination of a notice or order, may be served on the person to whom it is issued in either manner provided in paragraph (a) of this section.

(c) Designation by any person of an agent for service of notices and orders shall be made in a conspicuous, easy-to-read manner on the mine identification sign, or on the mine bulletin board posted by the minesite office.

(d) The Office shall furnish copies of notices and orders to the State regulatory authority, if any, after their issuance. The Office may furnish copies to any person having an interest in the surface coal mining and reclamation operation or the permit area, such as the owner of the fee, a corporate officer of the permittee, or the bonding company.

(Surface Mining Control and Reclamation Act of 1977, secs. 201, 501, 521(a)(5) (30 U.S.C. 1211, 1251, 1271(a)(5)))

[45 FR 2628, Jan. 11, 1980]

§ 722.15 Informal public hearing.

(a) Except as provided in paragraphs (b) and (c) of this section, a notice of violation or cessation order which requires cessation of mining, expressly or by necessary implication, shall expire within 30 days after it is served unless an informal public hearing has been held within that time. The hearing shall be held at or reasonably close to the minesite so that it may be viewed during the hearing or at any other location acceptable to the Office and the person to whom the notice or order was issued. The Office of Surface Mining office nearest to the minesite shall be deemed to be reasonably close to the minesite unless a closer location is requested and agreed to by the Office. Expiration of a notice or order shall not affect the Office's right to assess civil penalties with respect to the period during which the notice or order was in effect. No hearing will be required where the condition, practice or violation in question has been abated, or the hearing has been waived. For purposes of this section only, mining means (1) extracting coal from the earth or from coal waste piles and transporting it within or from the permit area, and (2) the processing, cleaning, concentrating, preparing or loading of coal where such operations occur at a place other than at a minesite.

(b) A notice of violation or cessation order shall not expire as provided in paragraph (a) of this section if the informal public hearing has been waived or if, with the consent of the person to whom the notice or order was issued, the informal public hearing is held later than 30 days after the notice or order was served. For purposes of this section:

(1) The informal public hearing will be deemed waived if the person to whom the notice or order is issued:

(i) Is informed, by written notice served in the manner provided in paragraph (b)(2) of this section, that he will be deemed to have waived an informal public hearing unless he requests one within 30 days after service of the notice or order, and

(ii) Fails to request an informal public hearing within that time.

(2) The written notice referred to in paragraph (b)(1)(i) of this section shall be delivered to such person by an authorized representative or sent by certified mail to such person no later than five days after the notice or order is served on such person.

(3) The person to whom the notice or order is issued shall be deemed to have consented to an extension of the time for holding the informal public hearing if his request is received on or after the 21st day after the service of the notice of order. The extension of time shall be equal to the number of days elapsed after the 21st day.

(c) The Office shall give as much advance notice as is practicable of the time, place, and subject matter of the informal public hearing to:

(1) The person to whom the notice or order was issued;

(2) Any person who filed a report which led to the notice or order; and

(3) The State regulatory authority, if any.

(d) The Office shall also post notice of the hearing at the regional district or field office closest to the minesite, and publish it, where practicable, in a newspaper of general circulation in the area of the mine.

(e) Section 554 of Title 5 of the United States Code, regarding requirements for formal adjudicatory hearings, shall not govern the conduct of these informal public hearings. An informal public hearing shall be conducted by a representative of the Office, who may accept oral or written arguments and any other relevant information from any person attending.

(f) Within five business days after the date of the informal public hearing, the Office shall affirm, modify, or vacate the notice or order in writing and send its decision to:

(1) The person to whom the notice or order was issued;

(2) Any person who filed a report which led to the notice or order; and

(3) The State regulatory authority, if any.

(g) The granting or waiver of an informal public hearing shall not affect the right of any person to formal review under sections 518(b), 521(a)(4), or 525 of the Act.

(h) The person conducting the hearing for the Office shall determine whether or not the minesite should be viewed during the hearing. In making this determination the only consideration shall be whether a view of the minesite will assist the person conducting the hearing in reviewing the appropriateness of the enforcement action or the required remedial action.

(Surface Mining Control and Reclamation Act of 1977, secs. 201, 501, 521(a)(5) (30 U.S.C. 1211, 1251, 1271(a)(5)))

[45 FR 2628, Jan. 11, 1980]

§ 722.16 Pattern of violations.

(a) The regulations of this section set forth the procedures governing the suspension or revocation of State permits and rights to mine under this Act based on a pattern of violations arising during Federal inspections during the initial regulatory program.

(b) *Definitions.* As used in this section—

(1) "*Violations of the same or related requirements of the Act, regulations or permit conditions*" means noncompliance with any single section of Parts 715, 716, or 717 of this chapter.

(2) "*Violations of different requirements of the Act, regulations, or permit conditions*" means noncompliance with different sections of Parts 715, 716, or 717 of this chapter.

(3) "*Unwarranted failure to comply*" means the failure of a permittee to prevent the occurrence of any violation of his permit or any requirement of the Act or these regulations due to indifference, lack of diligence, lack of reasonable care; or the failure to abate any violation of such permit, the Act or regulations due to indifference, lack of diligence, or lack of reasonable care.

(4) "*Willful violation*" means an intentional action or omission which violates the Act, regulations or permit conditions required under the Act.

(5) "*Inspection*" as used in this section means any visit to the mine.

(c) *Order to show cause.* (1) If the Director determines that a pattern of violations of any requirements of the Act, the regulations, or a permit condition imposed under the Act or regulations exists, or has existed, and that such violations are caused by the unwarranted failure of the permittee or were willful violations, the Director shall issue an order to the permittee to show cause why the permit should not be suspended or revoked.

(2) The Director may determine that a pattern of violations exists or has existed, after considering the circumstances, including—

(i) The number of willful violations or violations caused by unwarranted failure to comply with the same or related requirements of the Act, regulations, or permit conditions during two or more Federal inspections;

(ii) The number of willful violations or violations caused by unwarranted failure to comply with different requirements of the Act, regulations, or permit conditions; and

(iii) The extent to which the violations were isolated departures from lawful conduct.

(3) Violations of the same or related requirements of the Act, regulations, or permit conditions required by the Act during three or more Federal inspections within any 12-month period which were either caused by the unwarranted failure of the permittee to comply with the Act, the regulations or permit conditions required by the Act, or were willful violations, shall constitute a pattern of violations. A show cause order shall issue unless the Director finds that it would not further enforcement of the performance standards of the Act.

(d) *Suspension or revocation of permit.* (1) The order to show cause shall be issued and a public hearing, if requested, shall be conducted under the procedures of 43 CFR Part 4.

(2) If the Secretary finds that a pattern of violations exists or has existed, the permit and right to mine under this Act shall be either suspended or revoked and the permittee directed to complete necessary corrective measures and reclamation operations.

(e) Whenever a permittee fails to abate a violation contained in a notice of violation or cessation order within the abatement period set in the notice or order or as subsequently extended, the Director shall review the permittee's history of violations to determine whether a pattern of violations exists pursuant to this section, and shall issue an order to show cause as appropriate pursuant to 30 CFR 723.15(b)(2).

[42 FR 62701, Dec. 13, 1977 and 46 FR 58783, Sept. 4, 1980]

§ 722.17 Inability to comply.

(a) Neither a notice of violation nor a cessation order issued under this part may be vacated because of inability to comply.

(b) A permittee may not be deemed to have shown good cause for not suspending or revoking a permit by showing inability to comply.

(c) Unless caused by lack of diligence, inability to comply may be considered in mitigation of the amount of a civil penalty under Part 723 of this chapter and of the duration of the suspension of the permit under § 722.16 of this part.

PART 723—CIVIL PENALTIES

Sec.

723.1 Scope.
723.2 Objective.
723.11 How assessments are made.
723.12 When penalty will be assessed.
723.13 Point system for penalties.
723.14 Determination of amount of penalty.
723.15 Assessment of separate violations for each day.
723.16 Waiver of use of formula to determine civil penalty.
723.17 Procedures for assessment of civil penalties.
723.18 Procedures for assessment conference.
723.19 Request for hearing.
723.20 Final assessment and payment of penalty.

AUTHORITY: Surface Mining Control and Reclamation Act of 1977, secs. 201, 501, 518 (30 U.S.C. 1211, 1251, 1268).

SOURCE: 45 FR 58783, Sept. 4, 1980, unless otherwise noted.

§ 723.1 Scope.

This part covers the assessment of civil penalties under section 518 of the Act for violations of a permit condition, any provision of Title V of the Act, or any implementing regulations. This part governs when a civil penalty is assessed, how the amount is determined and sets forth applicable procedures. This part applies to cessation orders and notices of violation issued under Part 722 of this chapter during a Federal inspection.

[42 FR 62702, Dec. 13, 1977]

§ 723.2 Objective.

Civil penalties are assessed under section 518 of the Act and this part to deter violations and to ensure maximum compliance with the terms and purpose of the Act on the part of the coal mining industry.

§ 723.11 How assessments are made.

The Office shall review each notice of violation and cessation order in accordance with the assessment procedures described in §§ 723.12, 723.13, 723.14, 723.15, and 723.16 to determine whether a civil penalty will be assessed, the amount of the penalty, and whether each day of a continuing violation will be deemed a separate violation for purposes of the total penalty assessed.

§ 723.12 When penalty will be assessed.

(a) The Office shall assess a penalty for each cessation order.

(b) The Office shall assess a penalty for each notice of violation, if the violation is assigned 31 points or more under the point system described in § 723.13.

(c) The Office may assess a penalty for each notice of violation assigned 30 points or less under the point system described in § 723.13. In determining whether to assess a penalty, the Office shall consider the factors listed in § 723.13(b).

§ 723.13 Point system for penalties.

(a) The Office shall use the point system described in this section to determine the amount of the penalty and, in the case of notices of violation, whether a mandatory penalty should be assessed as provided in § 723.12(b).

(b) Points shall be assigned as follows:

(1) *History of previous violations.* The Office shall assign up to 30 points

based on the history of previous violations. One point shall be assigned for each past violation contained in a notice of violations. Five points shall be assigned for each violation (but not a condition or practice) contained in a cessation order. The history of previous violations for the purpose of assigning points, shall be determined and the points assigned with respect to a particular surface coal mining operation. Points shall be assigned as follows:

(i) A violation shall not be counted if the notice or order is the subject of pending administrative or judicial review or if the time to request such review or to appeal any administrative or judicial decision has not expired, and thereafter it shall be counted for only one year.

(ii) No violation for which the notice or order has been vacated shall be counted; and

(iii) Each violation shall be counted without regard to whether it led to a civil penalty assessment.

(2) *Seriousness.* The Office shall assign up to 30 points based on the seriousness of the violation, as follows:

(i) *Probability of occurrence.* The Office shall assign up to 15 points based on the probability of the occurrence of the event which a violated standard is designed to prevent. Points shall be assessed according to the following schedule:

PROBABILITY OF OCCURRENCE

	Points
None	0
Insignificant	1–4
Unlikely	5–9
Likely	10–14
Occurred	15

(ii) *Extent of potential or actual damage.* The Office shall assign up to 15 points, based on the extent of the potential or actual damage, in terms of area and impact on the public or environment, as follows:

(A) If the damage or impact which the violated standard is designed to prevent would remain within the permit area, the Office shall assign zero to seven points, depending on the duration and extent of the damage or impact.

(B) If the damage or impact which the violated standard is designed to prevent would extend outside the permit area, the Office shall assign eight to fifteen points, depending on the duration and extent of the damage or impact.

(iii) *Alternative.* In the case of a violation of an administrative requirement, such as a requirement to keep records, the Office shall, in lieu of paragraphs (i) and (ii), assign up to 15 points for seriousness, based upon the extent to which enforcement is obstructed by the violation.

(3) *Negligence.* (i) The Office shall assign up to 25 points based on the degree of fault of the person to whom the notice or order was issued in causing or failing to correct the violation, condition, or practice which led to the notice or order, either through act or omission. Points shall be assessed as follows:

(A) A violation which occurs through no negligence shall be assigned no penalty points for negligence;

(B) A violation which is caused by negligence shall be assigned 12 points or less, depending on the degree of negligence;

(C) A violation which occurs through a greater degree of fault than negligence shall be assigned 13 to 25 points, depending on the degree of fault.

(ii) In determining the degree of negligence involved in a violation and the number of points to be assigned, the following definitions apply:

(A) "No negligence" means an inadvertent violation which was unavoidable by the exercise of reasonable care.

(B) "Negligence" means the failure of a permittee to prevent the occurrence of any violation of his or her permit or any requirement of the Act or this chapter due to indifference, lack of diligence, or lack of reasonable care, or the failure to abate any violation of such permit or the Act due to indifference, lack of diligence, or lack of reasonable care.

(C) "A greater degree of fault than negligence" means reckless, knowing, or intentional conduct.

(iii) In calculating points to be assigned for negligence, the acts of all persons working on the surface coal mining and reclamation site shall be attributed to the person to whom the notice or order was issued, unless than person establishes that they were acts of deliberate sabotage.

(4) *Good faith in attemping to achieve compliance.* (i) The Office shall add points based on the degree of good faith of the person to whom the notice or order was issued in attempting to achieve rapid compliance after notification of the violation. Points shall be assigned as follows:

DEGREE OF GOOD FAITH

	Points
Rapid compliance	1 to 10
Normal compliance	0

(ii) The following definitions shall apply under paragraph (b)(4)(i) of this section:

(A) "Rapid compliance" means that the person to whom the notice or order was issued took extraordinary measures to abate the violation in the shortest possible time and that abatement was achieved before the time set for abatement.

(B) "Normal compliance" means the person to whom the notice or order was issued abated the violation within the time given for abatement.

(iii) If the consideration of this criterion is impractical because of the length of the abatement period, the assessment may be made without considering this criterion and may be reassessed after the violation has been abated.

§ 723.14 Determination of amount of penalty.

The Office shall determine the amount of any civil penalty by converting the total number of points assigned under 30 CFR 723.13 to a dollar amount, according to the following schedule:

Points	Dollars
1	20
2	40
3	60
4	80
5	100
6	120
7	140
8	160
9	180
10	200
11	220
12	240
13	260
14	280
15	300
16	320
17	340
18	360
19	380
20	400
21	420
22	440
23	460
24	480
25	500
26	600
27	700
28	800
29	900
30	1,000
31	1,100
32	1,200
33	1,300
34	1,400
35	1,500
36	1,600
37	1,700
38	1,800
39	1,900
40	2,000
41	2,100
42	2,200
43	2,300
44	2,400
45	2,500
46	2,600
47	2,700
48	2,800
49	2,900
50	3,000
51	3,100
52	3,200
53	3,300
54	3,400
55	3,500
56	3,600
57	3,700
58	3,800
59	3,900
60	4,000
61	4,100
62	4,200
63	4,300
64	4,400
65	4,500
66	4,600
67	4,700
68	4,800
69	4,900
70 and above	5,000

§ 723.15 Assessment of separate violations for each day.

(a) The Office may assess separately a civil penalty for each day from the date of issuance of the notice of violation or cessation order to the date set for abatement of the violation. In determining whether to make such an assessment, the Office shall consider the factors listed in 30 CFR 723.13 and may consider the extent to which the person to whom the notice or order was issued gained any economic benefit as a result of a failure to comply. For any violation which continues for two or more days and which is assigned more than 70 points under 30 CFR 723.13(b), the Office shall assess a civil penalty for a minimum of two separate days.

(b) In addition to the civil penalty provided for in paragraph (a), whenever a violation contained in a notice of violation or cessation order has not been abated within the abatement period set in the notice or order or as subsequently extended pursuant to section 521(a) of the Act, a civil penalty of not less than $750 shall be assessed for each day during which such failure to abate continues, except that:

(1)(i) If suspension of the abatement requirements of the notice or order is ordered in a temporary relief proceeding under section 525(c) of the Act, after a determination that the person to whom the notice or order was issued will suffer irreparable loss or damage from the application of the requirements, the period permitted for abatement shall not end until the date on which the Office of Hearing and Appeals issues a final order with respect to the violation in question; and

(ii) If the person to whom the notice or order was issued initiates review proceedings under section 526 of the Act with respect to the violation, in which the obligations to abate are suspended by the court pursuant to section 526(c) of the Act, the daily assessment of a penalty shall not be made for any period before entry of a final order by the court.

(2) Such penalty for the failure to abate a violation shall not be assessed for more than 30 days for such violation. If the permittee has not abated the violation within the 30-day period, the Office shall take appropriate action pursuant to sections 518(e), 518(f), 521(a)(4) or 521(c) of the Act within 30 days to ensure that abatement occurs or to ensure that there will not be a reoccurrence of the failure to abate.

§ 723.16 Waiver of use of formula to determine civil penalty.

(a) The Director, upon his own initiative or upon written request received within 15 days of issuance of a notice of violation or a cessation order, may waive the use of formula contained in 30 CFR 723.13 to set the civil penalty, if he or she determines that, taking into account exceptional factors present in the particular case, the penalty is demonstrably unjust. However, the Director shall not waive the use of the formula or reduce the proposed assessment on the basis of an argument that a reduction in the proposed penalty could be used to abate violations of the Act, this chapter, any applicable program, or any condition of any permit or exploration approval. The basis for every waiver shall be fully explained and documented in the records of the case.

(b) If the Director waives the use of the formula, he or she shall use the criteria set forth in 30 CFR 723.13(b) to determine the appropriate penalty. When the Director has elected to waive the use of the formula, he or she shall give a written explanation of the basis for the assessment made to the person to whom the notice or order was issued.

§ 723.17 Procedures for assessment of civil penalties.

(a) Within 15 days of service of a notice or order, the person to whom it was issued may submit written information about the violation to the Office and to the inspector who issued the notice of violation or cessation order. The Office shall consider any information so submitted in determining the facts surrounding the violation and the amount of the penalty.

(b) The Office shall serve a copy of the proposed assessment and of the worksheet showing the computation of the proposed assessment on the person to whom the notice or order was issued, by certified mail, within 30 days of the issuance of the notice or order. If the mail is tendered at the address of that person set forth in the sign required under 30 CFR 715.12(b) or at any address at which that person is in fact located, and he or she refuses to accept delivery of or to collect such mail, the requirements of this paragraph shall be deemed to have been complied with upon such tender.

(c) Unless a conference has been requested, the Office shall review and reassess any penalty if necessary to consider facts which were not reasonably available on the date of issuance of the proposed assessment because of the length of the abatement period. The Office shall serve a copy of any such reassessment and of the worksheet showing the computation of the reassessment in the manner provided in paragraph (b) of this section, within 30 days after the date the violation is abated.

§ 723.18 Procedures for assessment conference.

(a) The Office shall arrange for a conference to review the proposed assessment or reassessment, upon written request of the person to whom the notice or order was issued, if the request is received within 15 days from the date the proposed assessment or reassessment is mailed.

(b)(1) The Office shall assign a conference officer to hold the assessment conference. The assessment conference shall not be governed by section 554 of Title 5 of the United States Code, regarding requirements for formal adjudicatory hearings. The assessment conference shall be held within 60 days from the date of issuance of the proposed assessment or the end of the abatement period, whichever is later.

(2) The Office shall post notice of the time and place of the conference at the regional, district or field office closest to the mine at least 5 days before the conference. Any person shall have a right to attend and participate in the conference.

(3) The conference officer shall consider all relevant information on the violation. Within 30 days after the conference is held, the conference officer shall either:

(i) Settle the issues, in which case a settlement agreement shall be prepared and signed by the conference officer on behalf of the Office and by the person assessed; or

(ii) Affirm, raise, lower, or vacate the penalty.

(4) An increase or reduction of a proposed civil penalty assessment of more than 25 percent and more than $500 shall not be final and binding on the Secretary, until approved by the Director or his designee.

(c) The conference officer shall promptly serve the person assessed with a notice of his or her action in the manner provided in 30 CFR 723.17(b) and shall include a worksheet if the penalty has been raised or lowered. The reasons for the conference officer's action shall be fully documented in the file.

(d)(1) If a settlement agreement is entered into, the person assessed will be deemed to have waived all rights to further review of the violation or penalty in question, except as otherwise expressly provided for in the settlement agreement. The settlement agreement shall contain a clause to this effect.

(2) If full payment of the amount specified in the settlement agreement is not received by the Office within 30 days after the date of signing, the Office may enforce the agreement or rescind it and proceed according to paragraph (b)(3)(ii) of this section within 30 days from the date of the rescission.

(e) The conference officer may terminate the conference when he determines that the issues cannot be resolved or that the person assessed is not diligently working toward resolution of the issues.

§ 723.19 Request for hearing.

(a) The person charged with the violation may contest the proposed penalty or the fact of the violation by submitting a petition and an amount equal to the proposed penalty or, if a conference has been held, the reassessed or affirmed penalty to the Office of Hearings and Appeals to be held in escrow as provided in paragraph (b) of this section within 30 days from receipt of the proposed assessment or reassessment or 15 days from the date of service of the conference officer's action, whichever is later. The fact of the violation may not be contested, if it has been decided in a review proceeding commenced under section 525 of the Act and 43 CFR Part 4.

(b) The Office of Hearings and Appeals shall transfer all funds submitted under paragraph (a) of this section to the Office, which shall hold them in escrow pending completion of the administrative and judicial review process, at which time it shall disburse them as provided in 30 CFR 723.20.

§ 723.20 Final assessment and payment of penalty.

(a) If the person to whom a notice of violation or cessation order is issued fails to request a hearing as provided in 30 CFR 723.19, the proposed assessment shall become a final order of the Secretary and the penalty assessed shall become due and payable upon expiration of the time allowed to request a hearing.

(b) If any party requests judicial review of a final order of the Secretary, the proposed penalty shall continue to be held in escrow until completion of the review. Otherwise, subject to paragraph (c) of this section, the escrowed funds shall be transferred to the Office in payment of the penalty, and the escrow shall end.

(c) If the final decision in the administrative and judicial review results in an order or eliminating the proposed penalty assessed under this part, the Office shall within 30 days of receipt of the order refund to the person assessed all or part of the escrowed account, with interest from the date of payment into escrow to the date of the refund at the rate of 6 percent or at the prevailing Department of the Treasury rate, whichever is greater.

(d) If the review results in an order increasing the penalty, the person to whom the notice or order was issued shall pay the difference to the Office within 15 days after the order is mailed to such person.

PART 725—REIMBURSEMENTS TO STATES

Sec.
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AUTHORITY: Secs. 201, 501, and 502, Pub. L. 95-87, 91 Stat. 445 (30 U.S.C. 1201).

SOURCE: 42 FR 62704, Dec. 13, 1977, unless otherwise noted.

EDITORIAL NOTE: For nomenclature changes to this part, see 47 FR 38490, Aug. 31, 1982.

§ 725.1 Scope.

This part sets forth policies and procedures for reimbursements to States for costs of enforcing the initial performance standards set forth in this chapter.

§ 725.2 Objectives.

The objectives of assistance under this part are:

(a) To assist the States in meeting the increased costs of administering the initial performance standards.

(b) To encourage the States to build strong reclamation and enforcement programs.

§ 725.3 Authority.

Section 502(e)(4) of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201) authorizes the Secretary to reimburse States for costs of enforcing the performance standards of the initial regulatory program.

§ 725.4 Responsibility.

(a) The Director shall administer the grant program for reimbursement to States for costs of enforcing performance standards during the initial regulatory program.

(b) The Director or his authorized designee shall receive, review and approve grant applications under this part.

[42 FR 62704, Dec. 13, 1977, as amended at 47 FR 38490, Aug. 31, 1982]

§ 725.5 Definitions.

As used in this part, the following terms have the specified meanings:

Agency means the State agency designated by the Governor to receive and administer grants under this part.

Base program means [illegible] program to regulate surface [illegible] mining prior to August 3, 1977.

§ 725.10 Information collection.

The information collection requirements contained in 30 CFR 725.15, 725.23(a) and 725.24 have fewer than 10 respondents per year, they are exempt from the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) and do not require clearance by OMB.

[47 FR 38490, Aug. 31, 1982]

§ 725.11 Eligibility.

(a) *Assumption of responsibility.* To be eligible for a grant for reimbursements for the cost of enforcing performance standards during the initial regulatory program the State shall assume responsibility for enforcement of the initial regulatory program including the specific responsibilities identified under § 710.4(b) and Part 720 of this chapter.

(b) *Designation of State agency.* In order to receive a grant for reimbursements for costs of enforcing performance standards during the initial regulatory program, the Governor of a State shall designate in writing one agency to submit grant applications, receive and administer grants under this part.

(c) *Periods covered by reimbursement grants.* An agency may apply for a reimbursement grant for any period during the initial regulatory program and for a reasonable start-up period beginning no later than August 3, 1977.

§ 725.12 Coverage of grants.

An agency may use grant money under this part to cover costs in excess of the base program for administering and enforcing the initial regulatory program. The Director or his authorized designee shall determine the base program from the State fiscal year budget in effect on August 3, 1977. Costs of the following items are eligible for reimbursement—

(a) Incorporation of the initial performance standards of this chapter in new permits issued by the State.

(b) Modification of existing permits to include the initial performance standards of this chapter.

(c) Additional inspections required to enforce the initial performance standards of this chapter.

(d) Inspections which are more detailed than inspections before the initial regulatory program.

(e) Responses to complaints related to the initial performance standards of this chapter.

(f) Enforcement actions required to secure compliance with the initial performance standards of this chapter.

(g) Additional administrative activities and supporting costs related to hiring additional inspectors and other personnel, revising permits, conducting inspections, preparing, copying and submitting reports required by Part 720, and submitting applications for reimbursement grants under this part.

(h) Additional equipment required for inspection or support of inspections, as follows:

(1) An agency may charge any required item of equipment to the grant on a use bases in accordance with the principles set forth in Federal Management Circular 74-4, "Cost principles applicable to grants and contracts with State and local governments" (34 CFR Part 255).

(2) An agency may purchase equipment, with grant funds where cost recovery through use charges is prohibited, made impractical or more costly

than purchase by existing State laws or procedures.

[42 FR 62704, Dec. 13, 1977, as amended at 45 FR 34880, May 23, 1980]

§ 725.13 Amount of grants.

The Office shall pay up to 100 percent of the costs to the agency in excess of the base program for administering and enforcing the performance standards during the initial regulatory program.

§ 725.14 Grant periods.

The Director or his authorized designee shall normally approve a grant for a period of one year or less. OSM shall fund a program that extends over more than one year by consecutive annual grants or amendments to the existing grant.

[47 FR 38490, Aug. 31, 1982]

§ 725.15 Grant application procedures.

(a) The agency may submit its application (three copies) for a grant to the Director or his authorized designee at least sixty days prior to the beginning of the intended grant period, or as soon thereafter as possible.

(b) The agency shall use the application forms and procedures applicable to non-construction and/or construction programs specified by OSM in accordance with Office of Management and Budget Circular No. A-102, "Uniform administrative requirements for grants-in-aid to State and local governments" (42 FR 45828). No preapplication is required. Each application must include the following:

(1) Part I, Application Form coversheet, SF 424.

(2) Part II, Project Approval Information.

(i) For non-construction grants use Form OSM-50A, Project Approval Information—Section A.

(ii) For construction grants use Form OSM-50A, Project Approval Information—Section A and Form OSM-50B, Project Approval Information—Section B.

(3) Part III, Budget Information.

(i) For non-construction grants use Form OSM-47, Budget Information Report, with a narrative explanation of computations.

(ii) For construction grants use Form OSM-48, Budget Information—Construction with a narrative explanation of computations.

(4) Part IV, Program Narrative Statement, Form OSM-51, providing the narrative for the goals to be achieved for both construction and non-construction grants.

(i) Form OSM-51 is supplemented by completion of column 5A of Forms OSM-51A and OSM-51B which reports the quantitative program management information of the Interim Regulatory grants.

(ii) Form OSM-51 is supplemented by completion of Column 5A of Form OSM-51C which reports the quantitative program management information of the Small Operator Program Administration and Operational grants.

(5) Part V, The standard assurance for non-construction activities or construction activities as specified in Office of Management and Budget Circular No. A-102, Attachment M.

(c) The agency shall include sufficient information to enable the Director or his authorized designee to determine the agency's base program and increases over the base program eligible for reimbursement grants. The agency shall include the following information, plus any other relevant data:

(1) A summary of the State permit, inspection and enforcement program prior to the addition of the requirements of the Act of 1977, including—

(i) Permit requirements and the system for issuing permits;

(ii) Mining-and-reclamation plan requirements;

(iii) Coverage and frequency of inspections;

(iv) Actions required to enforce mining and reclamation requirements;

(v) The number and nature of responses to complaints; and

(vi) Other regulatory activities and related administrative functions affected by the performance standards of the initial regulatory program of this chapter.

(2) A statement of the number of employees and annual budget required to carry out functions described in paragraph (c)(1) of this section.

(3) A copy of all State constitutional, statutory and regulatory provisions applicable to the enforcement and administration of the initial regulatory program.

(4) An opinion of the State's chief legal officer as to whether and to what extent the State is authorized to enforce and administer the initial regulatory program.

(5) A statement of the additional work required to enforce the initial regulatory program for each of the agency activities described in paragraph (c)(1) of this section.

(6) The additional staff and funds required for the increased workload described in paragraph (c)(5) of this section.

(7) The number and types of major equipment (equipment with a unit acquisition cost of $500 or more and having a life of more than two years) which the agency plans to purchase with grant funds.

(d) The Director or his authorized designee may waive the resubmission of information required by paragraphs (c) (1), (2), (3) and (4) of this section in applications for the following grants.

(e) The Director or his authorized designee shall notify the agency within thirty days after the receipt of a complete application, or as soon thereafter as possible, whether it is or is not approved. If the application is not approved, the Director or his authorized designee shall set forth in writing the reasons it is not approved, and may propose modifications if appropriate. The agency may resubmit the application within thirty days. The Director or his authorized designee shall process the revised application as an original application.

[42 FR 62704, Dec. 13, 1977, as amended at 47 FR 38490, Aug. 31, 1982]

§ 725.16 Grant agreement.

(a) If a Director or his authorized designee approves an agency's grant application, the Director or his authorized designee shall prepare a grant agreement which includes—

(1) The approved scope of the program to be covered by the grant, including functions to be accomplished by other agencies.

(2) The base program budget and estimated costs in excess of the base program.

(3) The amount of the grant.

(4) Commencement and completion dates for the segment of the program covered by this grant and for major phases of the program to be completed during the grant period.

(5) Permissible transfers of funds to other State agencies.

(b) The Director or his authorized designee shall limit grants under this part to the additional costs to an agency for administering and enforcing the initial regulatory program.

(c) The Director or his authorized designee may permit the agency to assign functions and funds to other State agencies. The Director or his authorized designee shall require the grantee agency to retain responsibility for overall administration of the grant, including use of funds, accomplishment of functions and reporting.

(d) Except as may be provided by the grant agreement, costs may not be incurred prior to the execution of the agreement.

(e) The Director or his authorized designee shall transmit four copies of the grant agreement, by certified mail, return receipt requested, to the agency for signature. The agency shall execute the grant agreement and return all copies within 3 calendar weeks after receipt, or within an extension of such time that may be granted by the Director or his authorized designee.

(f) The Director or his authorized designee shall sign the grant agreement upon its return from the agency and return one copy to the agency. The grant is effective and constitutes an obligation of Federal funds in the amount and for the purposes stated in the grant agreement at the time the Director or his authorized designee signs the agreement.

(g) Neither the approval of a program nor the award of any grant will commit or obligate the United States to award any continuation grant or to enter into any grant amendment, including grant increases to cover cost overruns.

§ 725.17 Grant amendments.

(a) A grant amendment is a written alteration to the grant amount, grant terms or conditions, budget or period, or other administrative, technical, or financial agreement whether accomplished on the initiative of the agency or the Director or his authorized designee or by mutual action of the agency and the Director or his authorized designee.

(b) The agency shall promptly notify the Director or his authorized designee in writing of events or proposed changes which require a grant amendment, such as:

(1) Rebudgeting;

(2) Changes which may affect the approved scope or objective of a program; or

(3) Changes which may increase or substantially decrease the total cost of a program.

(c) The Director or his authorized designee shall approve or disapprove each proposed amendment within 30 days of receipt, or as soon thereafter as possible, and shall notify the agency in writing of the approval or disapproval of the amendment.

(d) The date the Director or his authorized designee signs the grant amendment establishes the effective date of the action. If no time period is specified in the grant amendment then the amendment applies to the entire grant period.

[42 FR 62704, Dec. 13, 1977, as amended at 47 FR 38490, Aug. 31, 1982]

§ 725.18 Grant reduction and termination.

(a) *Conditions for reduction or termination.* (1) If an agency fails to carry out its responsibilities pursuant to § 710.4(b) and Part 720 of this chapter the Director or his authorized designee shall reduce or terminate the grant.

(2) If an agency violates the terms of a grant agreement, the Director or his authorized designee may reduce or terminate the grant.

(3) If an agency fails to enforce the initial performance standards of this chapter the Director or his authorized designee may reduce or terminate the grant.

(4) If an agency is not in compliance with the following nondiscrimination provisions, the Director or his authorized designee shall terminate the grant—

(i) Title VI of the Civil Rights Act of 1964 (78 Stat. 252), Nondiscrimination in Federally Assisted Programs, which provides that no person in the United States shall on the grounds of race, color or national origin be excluded from participation in, be denied the benefits of or be subjected to discrimination under any program or activity receiving Federal financial assistance, and the implementing regulations at 43 CFR 17.

(ii) Executive Order 11246, as amended by Executive Order 11375, Equal Employment Opportunity, requiring that employees or applicants for employment not be discriminated against because of race, creed, color, sex or national orgin, and the implementing regulations at 41 CFR 60.

(iii) Section 504 of the Rehabilitation Act of 1973, as amended by Executive Order 11914, Nondiscrimination with Respect to the Handicapped in Federally Assisted Programs.

(5) If an agency fails to enforce the financial interest provisions of Part 705 of this chapter the Director shall terminate the grant.

(6) If an agency fails to submit reports required by this part or Parts 705 and 720 of this chapter the Director shall reduce or terminate the grant.

(b) *Grant reduction and termination procedures.* (1) The Director or his authorized designee shall give at least 10 days written notice to the agency by certified mail, return receipt requested, of intent to reduce or terminate a grant. The Director or his authorized designee shall include in the notice the reasons for the proposed action and the proposed effective date of the action.

(2) The Director or his authorized designee shall afford the agency opportunity for consultation and remedial action prior to reducing or terminating a grant.

(3) The Director or his authorized designee shall notify the agency of the termination or reduction of the grant in writing by certified mail, return reciept requested.

(4) Upon termination the agency shall refund or credit to the United States that portion of the grant money paid or owed to the agency and allocated to the terminated portion of the grant. However any portion of the grant that is required to meet commitments made prior to the effective date of termination shall be retained by the agency.

(5) Upon termination, the agency shall reduce the amount of outstanding commitments insofar as possible and report to the Director or his authorized designee the uncommitted balance of funds awarded under the grant.

(6) Upon notification of intent to terminate, the agency shall not make any new commitments without the approval of the Director or his authorized designee.

(7) The Director or his authorized designee may allow termination costs as determined by applicable Federal cost principles listed in Federal management Circular 74-4.

(c) *Appeals.* (1) An Agency may appeal the Director or his authorized designee's decision to reduce or terminate a grant to the Director within 30 days of the Director or his authorized designee's decision.

(2) An Agency shall include in an appeal:

(i) The decision being appealed, and

(ii) The facts which the Agency believes justify a reversal or modification of the decision.

(3) The Director shall act on appeals within 30 days of their receipt, or as soon thereafter as possible.

§ 725.19 Audit.

The agency shall arrange for an independent audit no less frequently than once every two years, pursuant to the requirements of Office of Management and Budget Circular No. A-102, Attachment P. The audits will be performed in accordance with the "Standards for Audit of Governmental Organizations, Programs, Activities, and Functions" and the "Guidelines for Financial and Compliance Audits of Federally Assisted Programs" published by the Comptroller General of the United States and guidance provided by the cognizant Federal audit agency.

[48 FR 38490, Aug. 31, 1983]

§ 725.20 Administrative procedures.

The Agency shall follow administrative procedures governing accounting, payment property, and related requirements contained in Office of Management and Budget Circular No. A-102.

§ 725.21 Allowable costs.

(a) The Director or his authorized designee shall determine costs which may be reimbursed according to Office of Management and Budget Circular No. A-87.

(b) Costs must be in conformity with any limitations conditions or exclusions set forth in the grant agreement or this part.

(c) Costs must be allocated to the grant to the extent of benefit properly attributable to the period covered by the grant.

(d) Costs must not be allocated to or included as a cost of any other federally assisted program.

[42 FR 62704, Dec. 13, 1977, as amended at 47 FR 38490, Aug. 31, 1982]

§ 725.22 Financial management.

(a) The agency shall account for grant funds in accordance with the requirements of Office of Management and Budget Circular A-102. An agency shall use generally accepted accounting principles and practices, consistently applied. Accounting for grant funds must be accurate and current.

(b) The agency shall adequately safeguard all funds, property, and other assets and shall assure that they are used solely for authorized purposes.

(c) The agency shall provide a comparison of actual amounts spent with budgeted amounts for each grant.

(d) When advances are made by a letter-of-credit method, the agency shall make drawdowns from the U.S. Treasury through its commercial bank as closely as possible to the time of making the disbursements.

(e) The agency shall support accounting records by source documentation.

(f) The agency shall design a systematic method to assure timely and appropriate resolution of audit findings and recommendations.

§ 725.23 Reports.

(a) The agency shall, for each grant made under this part, submit semiannually to the Director or his authorized designee a Financial Status Report, SF 269, for non-construction grant activities in accordance with Office of Management and Budget Circular No. A-102, Attachment H and OSM requirements. This report shall be accompanied by a Performance Report, Form OSM-51, comparing actual accomplishments to the goals established for the period, prepared according to Attachment I of OMB Circular No. A-102 and OSM requirements. The agency shall also submit semiannually a separate Outlay Report and Request for Reimbursement for Construction Programs, SF 271, and accompanying narrative performance report comparing actual accomplishments with planned goals on grant funded construction activities.

(b) The Director or his authorized designee shall require through the grant agreement that semiannual reports also describe the relationship of financial information to performance and productivity data, including unit cost information. This quantitative information will be reported on Forms OSM-51A and OSM-51B or OSM-51C, Quantitative Program Management Information, as applicable.

(c) The Director or his authorized designee shall require that when a grant is closed out in accordance with Attachment L to Office of Management and Budget Circular No. A-102 the following actions are taken:

(1) The grantee shall account for any property acquired with grant funds or received from the Government in accordance with the provisions of Attachment N to Office of Management and Budget Circular No. A-102. This may be accomplished by the submission of the Report of Government Property, Form OSM-60.

(2) The grantee shall submit a final financial report and thus release OSM from obligations under each grant or cooperative agreement that is being closed out.

[47 FR 38491, Aug. 31, 1982]

§ 725.24 Records.

(a) The agency shall maintain complete records in accordance with Office of Management and Budget Circular No. A-102. This includes books, records, documents, maps, and other evidence and accounting procedures and practices, sufficient to reflect properly—

(1) The amount, receipt, and disposition by the agency of all assistance received for the program.

(2) The total costs of the program, including all direct and indirect costs of whatever nature incurred for the performance of the program for which the grant has been awarded.

(b) Subgrantees and contractors, including contractors for professional services, shall maintain books, documents, papers, maps, and records which are pertinent to a specific grant award.

(c) The agency's records and the records of its subgrantees and contractors, including professional services contracts, shall be subject at all reasonable times to inspection, reproduction, copying, and audit by the Office, the Department of the Interior, the Comptroller General of the United States, the Department of Labor, or any authorized representative.

(d) For completed or terminated grants, the agency, subgrantees and contractors shall preserve and make their records available to the Office, the Department of the Interior, the Comptroller General of the United States, Department of Labor, or any authorized representative pursuant to OMB Circular A-102.

§ 725.25 Disclosure of information.

All grant applications received by the Director or his authorized designee constitute agency records. As such, their release may be requested by any member of the public under the Freedom of Information Act (5 U.S.C. 552), and shall be disclosed unless exempt from disclosure under 5 U.S.C. 552(b).

SUBCHAPTER C—PERMANENT REGULATORY PROGRAMS FOR NON-FEDERAL AND NON-INDIAN LANDS

PART 730—GENERAL REQUIREMENTS

Sec.
730.1 Scope.
730.5 Definitions.
730.11 Inconsistent and more stringent State laws and regulations.
730.12 Requirements for regulatory programs in States.

AUTHORITY: Secs. 501(b), 503, 504, 505 and 521 of Pub. L. 95-87 (30 U.S.C. 1251(b), 1253, 1254, 1255 and 1271).

§ 730.1 Scope.

This subchapter sets forth standards and procedures for the submission, review, and approval or disapproval of State programs, for coal exploration and surface coal mining and reclamation operations on non-Indian and non-Federal lands. In addition it sets forth criteria and procedures for amending approved programs, substituting Federal enforcement for State enforcement of State programs, and withdrawing approval of those programs not adequately implemented or maintained. Requirements are also included for State program grants and for the adoption of a Federal program in a State which does not have a State program or which has failed to implement, enforce or maintain an approved State program consistent with this subchapter.

[44 FR 15323, Mar. 13, 1979]

§ 730.5 Definitions.

As used in this subchapter unless otherwise indicated *Consistent with* and *in accordance with* mean:

(a) With regard to the Act, the State laws and regulations are no less stringent than, meet the minimum requirements of and include all applicable provisions of the Act.

(b) With regard to the Secretary's regulations, the State laws and regulations are no less effective than the Secretary's regulations in meeting the requirements of the Act.

[44 FR 15323, Mar. 13, 1979, as amended at 46 FR 53384, Oct. 28, 1981]

§ 730.11 Inconsistent and more stringent State laws and regulations.

(a) No State law or regulation shall be superseded by any provision of the Act or the regulations of this chapter, except to the extent that the State law or regulation is inconsistent with, or precludes implementation of, requirements of the Act or this chapter. The Director shall publish a notice of proposed action in the FEDERAL REGISTER setting forth the text or a summary of any State law or regulation initially determined by him to be inconsistent with the Act or this chapter. The notice shall provide 30 days for public comment. Following the close of the public comment period, the Director shall make a final determination which shall be published in the FEDERAL REGISTER.

(b) Any State law or regulation which provides for more stringent land use and environmental controls and regulations of coal exploration and surface coal mining and reclamation operations than do the provisions of the Act and this chapter, or which provides for the control and regulation of coal exploration and surface coal mining and reclamation operations for which no provision is contained in the Act or this chapter, shall not be construed to be inconsistent with the Act or this chapter.

[44 FR 15323, Mar. 13, 1979, as amended at 47 FR 26364, June 17, 1982]

§ 730.12 Requirements for regulatory programs in States.

(a) Not later than January 3, 1981, for each State in which coal exploration and surface coal mining and reclamation operations are or may be conducted on non-Federal and non-Indian land, either a State program or a Federal program adopted under this subchapter shall be in effect. However, the inability of a State to take any action the purpose of which is to prepare, submit or enforce a State program, or any part thereof, because the action is enjoined by the issuance of an injunction by any court of competent jurisdiction shall not result in the imposition of a Federal program for regulation of surface coal mining and reclamation operations. Regulation of surface coal mining and reclamation operations covered or to be covered by the State program subject to an injunction shall be conducted by the State pursuant to section 502 of the Act until such time as the injunction terminates or for one year from issuance of the injunction, whichever is shorter, at which time the requirements of sections 503 and 504 shall again be fully applicable. States in which no coal exploration or surface coal mining and reclamation operations are in existence or planned on January 3, 1981, on non-Federal and non-Indian lands but in which such exploration or operations may occur at some later date, shall have a State or Federal program in effect before commencement of any such exploration or operations.

(b) The State shall notify the Director of the issuance of any injunction which prevents or prohibits the State from preparing, submitting or enforcing a State program or portion thereof.

[44 FR 15323, Mar. 13, 1979, as amended at 45 FR 33927, May 20, 1980]

PART 731—SUBMISSION OF STATE PROGRAMS

Sec.
731.1 Scope.
731.12 Submission of State programs.
731.14 Content requirements for program submissions.

AUTHORITY: Secs. 501(b) and 503, Pub. L. 95-87 (30 U.S.C. 1251(b) and 1253).

§ 731.1 Scope.

This part establishes standards and procedures for the preparation and submission of State programs.

[44 FR 15324, Mar. 13, 1979]

§ 731.12 Submission of State programs.

Each State that wishes to regulate coal exploration and surface coal mining and reclamation operations on non-Federal and non-Indian lands within its boundaries shall submit three copies of a proposed program to the Director. A State may submit a proposed program at any time. The State shall retain sufficient copies of the program for public inspection under § 732.11(a).

[47 FR 26364, June 17, 1982]

§ 731.14 Content requirements for program submissions.

The program shall demonstrate that the State has the capability of carrying out the provisions of the Act and this chapter and achieving their purposes by providing a complete description of the system for implementing, administering and enforcing a State program including, at a minimum —

(a) A copy of the State laws in effect at the time of submission of the program which regulate coal exploration and surface coal mining and reclamation operations, a copy of any State regulations promulgated to implement and enforce those State laws and any amendments to State laws and regulations which are in the process of enactment and have been determined by the State to be essential to allow for program approval;

(b) Copies of other State laws and regulations directly affecting the regulation of coal exploration and surface coal mining and reclamation operations, and amendments to such other laws or regulations which affect the regulation of coal exploration and surface coal mining and reclamation operations which are being considered or are pending;

(c)(1) A legal opinion from the Attorney General of the State or chief legal officer of the State regulatory authority stating that the State has the legal authority under existing laws and regulations, or will have authority under amendments to laws and regulations which are in the process of enactment, to implement, administer and enforce the program and to regulate coal exploration and surface coal mining and reclamation operations in accordance with the Act and consistent with this chapter.

(2) A section-by-section comparison of the State's law and regulations and amendments which are in the process of enactment with the Act and this

chapter, explaining any differences and their legal effect;

(d) A copy of the legal document which designates one State agency as the regulatory authority and authorizes that agency to implement, administer and enforce a State program and to submit grant applications and receive and administer grants under this subchapter;

(e)(1) A description, including appropriate charts, of the existing and proposed structural organization of the agency designated as the regulatory authority and of other agencies or applicable divisions or departments of those agencies which will have duties in the State program. The description must indicate the coordination system between these agencies and lines of authority and the staffing functions within each agency and between agencies.

(2) A summary table of the existing and proposed State program staff, showing job functions, title and required job experience and training, and a description of how the staffing proposed for the State program will be adequate to carry out the functions, including permitting, inspection and legal actions for the projected workload to ensure that coal exploration and surface coal mining and reclamation operations will be regulated in accordance with the requirements of the Act and this chapter;

(f) A copy of supporting agreements between agencies which will have duties in the State program;

(g) Narrative descriptions, flow charts or other appropriate documents of the proposed systems for—

(1) Receiving notices of intention to explore and applications for new, revised or renewed approvals for coal exploration and permits for surface coal mining and reclamation operations, reviewing those applications, approving or disapproving requests for exploration approvals, permits, permit revisions and renewals;

(2) Assessing fees for permit applications;

(3) Implementing, administering and enforcing a system of performance bonds and liability insurance or other equivalent guarantees;

(4) Inspecting and monitoring coal exploration and surface coal mining and reclamation operations including provisions for public participation in the process;

(5) Enforcing the administrative, civil and criminal sanctions of State laws and regulations for violation of any requirement of those laws relating to the regulation of coal exploration and surface coal mining and reclamation operations;

(6) Administering and enforcing the permanent program performance standards;

(7) Assessing and collecting civil penalties;

(8) Issuing public notices and holding public hearings;

(9) Coordinating issuance of permits required under the Act and this chapter with other State, Federal and local agencies;

(10) Consulting with State and Federal agencies having responsibility for the protection or management of fish and wildlife and related environmental values, and historic, cultural and archeological resources;

(11) Designating lands unsuitable for surface coal mining operations, including provisions for terminating those designations and for public participation in the designation process;

(12) Monitoring, reviewing and enforcing restrictions against direct and indirect financial interests of State employees in surface coal mining and reclamation operations;

(13) Training, examining and certifying blasters, except that no State program is required to implement this provision until six months after the Federal regulations for the provision have been promulgated;

(14) Providing for public participation in the development, revision and enforcement of State regulations, the State program, and permits under the State program;

(15) Providing administrative and judicial review of actions provided for in the State program including inspection and enforcement actions; and

(16) Providing the determination of probable hydrologic consequences and the statement of the results of test borings or core samples required by section 507(c) of the Act.

(h) Statistical information describing coal exploration and surface coal mining and reclamation operations in the State, adequate to demonstrate that the provisions of the State program and the resources available to it are sufficient when compared to the current and projected coal mining activities in the State;

(i) A description of the actual capital and operating budget, including source of funds, used or proposed to be used to administer the State program for the prior and current fiscal years, and the projected annual budget for each of the next two fiscal years, assuming supplemental funding pursuant to an approved State program and grants under 30 CFR Part 735; and a description of the existing and proposed physical resources for use in the program.

(30 U.S.C. 1201 *et seq.*)

[44 FR 15324, Mar. 13, 1979, as amended at 47 FR 26364, June 17, 1982; 48 FR 2272, Jan. 18, 1983]

PART 732—PROCEDURES AND CRITERIA FOR APPROVAL OR DISAPPROVAL OF STATE PROGRAM SUBMISSIONS

Sec.
732.1 Scope.
732.10 Information collection.
732.11 Review by the Director.
732.13 Decision by the Secretary.
732.14 Resubmission of State programs.
732.15 Criteria for approval or disapproval of programs.
732.16 Terms and conditions for State programs.
732.17 State program amendments.

Authority: Secs. 501(b), 503, 504, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 521, and 522 (30 U.S.C. 1251(b), 1253, 1254, 1256, 1257, 1258, 1259, 1260, 1261, 1262, 1263, 1264, 1265, 1266, 1267, 1268, 1269, 1271 and 1272).

§ 732.1 Scope.

This part sets forth criteria and procedures for decisions to approve or disapprove submissions of State programs and program amendments, including requirements for public participation in the process of approval or disapproval.

[44 FR 15326, Mar. 13, 1979]

§ 732.10 Information collection.

The information collection requirements contained in 30 CFR 732.16(a) and 732.17(b) have been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned clearance number 1029-0024. The information is needed to afford a State the opportunity to modify or amend its State program and will be used by OSM to determine whether the amendment meets the provisions of the Act.

[47 FR 26365, June 17, 1982]

§ 732.11 Review by the Director.

(a) Immediately upon receipt of a proposed State program, the Director shall publish in the Federal Register and in a newspaper of general circulation in the State a notice meeting the following requirements:

(1) The notice shall include the date of the submission of the program and a summary of the program's contents. It shall also indicate that the full text of the program submission is available for review during regular business hours at the OSM State Office and at the central office and each field office of the State agency responsible for the submission.

(2) The notice shall afford interested persons an opportunity to submit written comments. The comment period shall end on a date following the public hearing scheduled to be held under paragraph (b) of this section and that date shall be specified in the notice.

(3) The notice shall identify the time and location within the State at which the Office will hold the public hearing under paragraph (b) of this section.

(b) A public hearing shall be held by the Director no sooner than 40 days following the publication of the notice required by paragraph (a) of this section. The hearing shall be informal and follow legislative procedures.

(1) The format and the rules of procedure for each hearing shall be determined by the Director and published in the Federal Register notice required by paragraph (a).

(2) When the program is submitted, State laws and regulations must be

submitted in their final form or in the form in which they are expected to become final. Should revisions to any of the laws or regulations be necessary during the public comment period or before the Secretary's decision, OSM will give notice and provide an opportunity for review and comment. State laws and regulations must be enacted by the date of program approval.

(c) Copies of written comments shall be available for public inspection and copying at the OSM State Office and the offices of the State agency responsible for submitting the program.

(d) The Director shall consider all relevant information, including information obtained from public hearings and comments, and shall recommend to the Secretary that the program be approved or disapproved, in whole or in part. The recommended decision shall specify the reasons for the recommendation.

[47 FR 26365, June 17, 1982]

§ 732.13 Decision by the Secretary.

(a) After consideration of the information accompanying the Director's recommendation and the Director's recommendation and findings, the Secretary shall issue to the State in writing, either a decision approving or an initial decision disapproving the State program, in whole or in part.

(b) A program shall not be approved until the Secretary has—

(1) Solicited and publicly disclosed the views of the Administrator of the Environmental Protection Agency, the Secretary of Agriculture, and the heads of other Federal agencies concerned with or having special expertise relevant to the program as proposed; and

(2) Obtained written concurrence of the Administrator of the Environmental Protection Agency with respect to those aspects of a State program which relate to air or water quality standards promulgated under the authority of the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 *et seq.*), or the Clean Air Act, as amended (42 U.S.C. 7401 *et seq.*).

(c) The Secretary's decision shall include the findings upon which it is based and shall be mailed to the State.

(d) The Secretary shall issue his decision within 6 months of the Director's receipt of a program submission.

(e) All decisions approving or disapproving a program, in whole or in part, shall be published in the FEDERAL REGISTER, indicating, in the event of disapproval, that the State has 60 days to submit a revised program for consideration.

(f) If the Secretary disapproves a program, in whole or in part, the State shall have 60 days from the date of publication of the FEDERAL REGISTER notice to submit a revised program to the Director for reconsideration. The procedures of § 732.11 will then apply to the revised State program, except that the time allowed between publication of notice and the public hearing for public review and comment may be shortened to not less than 15 days.

(g) The Secretary shall either approve or disapprove the revised program within 60 days from the date of submission of the revised program and publish that decision and reasons for the decision in the FEDERAL REGISTER. A decision disapproving the revised program constitutes the final decision by the Department disapproving that program in its entirety.

(h) If a revised State program is not submitted by a State within 60 days of an initial disapproval under paragraph (a) of this section, the Secretary shall disapprove the initial program submission in its entirety. This decision shall constitute the final decision by the Secretary. This decision and the basis for it shall be published in the FEDERAL REGISTER.

(i) A decision by the Secretary approving a program submission establishes a State program for the State which submitted it and constitutes the final decision by the Department. The State program becomes effective on the date of publication of the decision in the FEDERAL REGISTER unless otherwise specified by the Secretary. The Secretary shall not give his approval unless the program submission can be approved in whole, except as provided in paragraph (j) of this section.

(j) The Secretary may conditionally approve a State program where the program is found to have minor deficiencies, provided:

(1) The deficiencies are of such a size and nature so as to render no part of a proposed State program incomplete;

(2) The State has initiated and is actively proceeding with steps to correct the deficiencies;

(3) The State agrees in writing to correct such deficiencies within a time established by the Secretary and stated in the conditional approval; and

(4) If the deficiencies have not been corrected by the date set forth in the Secretary's decision under paragraph (j)(3) of this section, the Director shall notify the Secretary that the deficiencies have not been corrected and shall within 30 days—

(i) Withdraw approval of the State program in whole or in part, and specify the extent to which approval of the State program is being withdrawn;

(ii) Substitute direct Federal enforcement of those portions of the permanent regulatory program that the State has failed to implement;

(iii) Initiate procedures in accordance with Parts 733 and 736 of this chapter to withdraw State program approval and implement a Federal program for the State, including specifying necessary remedial actions to correct continued deficiencies; or

(iv) Take any combination of actions under paragraphs (j)(4) and (i) through (iii) of this section.

[44 FR 15326, Mar. 13, 1979, as amended at 47 FR 26365 and 26367, June 17, 1982]

§ 732.14 Resubmission of State programs.

If, by a final decision, the program is disapproved, the State may submit another proposed State program to the Director at any time. Resubmitted State programs must meet the requirements of § 731.14 and will be acted upon pursuant to §§ 732.11-732.16.

[47 FR 26366, June 17, 1982]

§ 732.15 Criteria for approval or disapproval of State programs.

The Secretary shall not approve a State program unless, on the basis of information contained in the program submission, comments, testimony and written presentations at the public hearings, and other relevant information, the Secretary finds that—

(a) The program provides for the State to carry out the provisions and meet the purposes of the Act and this Chapter within the State and that the State's laws and regulations are in accordance with the provisions of the Act and consistent with the requirements of the Chapter.

(b) The State regulatory authority has the authority under State laws and regulations pertaining to coal exploration and surface coal mining and reclamation operations and the State program includes provisions to —

(1) Implement, administer and enforce all applicable requirements consistent with Subchapter K of this chapter;

(2) Implement, administer and enforce a permit system consistent with the regulations of Subchapter G of this chapter and prohibit surface coal mining and reclamation operations without a permit issued by the regulatory authority;

(3) Regulate coal exploration consistent with 30 CFR Parts 772 and 815 and prohibit coal exploration that does not comply with 30 CFR Parts 772 and 815;

(4) Require that persons extracting coal incidental to government financed construction maintain information on site consistent with 30 CFR 707;

(5) Enter, inspect and monitor all coal exploration and surface coal mining and reclamation operations on non-Indian and non-Federal land within the State consistent with the requirements of section 517 of the Act and Subchapter L of this chapter;

(6) Implement, administer and enforce a system of performance bonds and liability insurance, or other equivalent guarantees, consistent with the requirements of Subchapter J of this chapter;

(7) Provide for civil and criminal sanctions for violations of the State law, regulations and conditions of permits and exploration approvals including civil and criminal penalties in accordance with section 518 of the Act and consistent with 30 CFR 845, including the same or similar procedural requirements;

(8) Issue, modify, terminate and enforce notices of violation, cessation

orders and show cause orders in accordance with section 521 of the Act and consistent with the requirements of Subchapter L of this chapter including the same or similar procedural requirements;

(9) Designate areas as unsuitable for surface coal mining consistent with Subchapter F of this chapter;

(10) Provide for public participation in the development, revision and enforcement of State regulations and the State program, consistent with public participation requirements of the Act and this chapter;

(11) Monitor, review and enforce the prohibition against indirect or direct financial interests in coal mining operations, by employees of the State regulatory authority, consistent with 30 CFR 705;

(12) Require the training, examination and certification of persons engaged in or responsible for blasting and the use of explosives consistent with regulations issued by the Secretary, except that no State program is required to implement this provision until six months after Federal regulations for this provision have been promulgated;

(13) Provide for small operator assistance.

(14) Provide for administrative review of State program actions, in accordance with section 525 of the Act and Subchapter L of this chapter;

(15) Provide for judicial review of State program actions in accordance with State law, as provided in section 526(e) of the Act, except that judicial review of State enforcement actions shall be in accordance with section 526 of the Act. Judicial review in accordance with State law shall not be construed to limit the operation of the rights established in section 520 of the Act, except as provided in that section.

(16) Cooperate and coordinate with and provide documents and other information to the Office under the provisions of this chapter.

(c) The State laws and regulations and the State program do not contain provisions which would interfere with or preclude implementation of those in the Act and this chapter.

(d) The State regulatory authority and other agencies having a role in the State program have sufficient legal, technical and administrative personnel and sufficient funding to implement, administer and enforce the provisions of the program, the requirements of paragraph (b) of this section, and other applicable State and Federal laws.

(30 U.S.C. 1201 *et seq.*)

[44 FR 15326, Mar. 13, 1979, as amended at 46 FR 53384, Oct. 28, 1981; 47 FR 26366, June 17, 1982; 48 FR 2272, Jan. 18, 1983; 48 FR 44779, Sept. 30, 1983]

EDITORIAL NOTE: For a document suspending § 732.15(b)(7) in part, see 45 FR 51548, Aug. 4, 1980.

§ 732.16 Terms and conditions for State programs.

Terms and conditions for the implementation, administration and operation of a State program may be established by the Director as necessary, including, but not limited to—

(a) Establishing a system for regularly reporting to the Office information collected by the State regulatory authority in the conduct of the State program; and

(b) Providing the Office with access to books and records of the regulatory authority upon request.

[44 FR 15326, Mar. 13, 1979]

§ 732.17 State program amendments.

(a) This section applies to any alteration of an approved State program whether accomplished on the initiative of the State regulatory authority or the Director. Such alterations are referred to in this section as "amendments".

(b) The State regulatory authority shall promptly notify the Director, in writing, of any significant events or proposed changes which affect the implementation, administration or enforcement of the approved State program. At a minimum, notification shall be required for—

(1) Changes in the provisions, scope or objectives of the State program;

(2) Changes in the authority of the regulatory authority to implement, administer or enforce the approved program;

(3) Changes in the State law and regulations from those contained in the approved State program;

(4) Significant changes in staffing and resources of the regulatory authority and divisions or departments of other agencies with duties in the approved program;

(5) Changes in agreements between the regulatory authority and other agencies which have duties in the approved program;

(6) Significant changes in funding or budgeting relative to the approved program; and

(7) Significant changes in the number or size of coal exploration or surface coal mining and reclamation operations in the State.

(c) Within 30 days of receipt of notification, in writing, of events or proposed changes that may require a State program amendment, or whenever the Director becomes aware of conditions described in paragraph (e) of this section, the Director shall determine whether a State program amendment is required and notify the State regulatory authority of the decision.

(d) The Director shall promptly notify the State regulatory authority of all changes in the Act and the Secretary's regulations which will require an amendment to the State program.

(e) State program amendments may be required when—

(1) As a result of changes in the Act or regulations of this chapter, the approved State program no longer meets the requirements of the Act or this chapter; or

(2) Conditions or events change the implementation, administration or enforcement of the State program; or

(3) Conditions or events indicate that the approved State program no longer meets the requirements of the Act or this chapter.

(f)(1) If the Director determines that a State program amendment is required, the State regulatory authority shall, within 60 days after notification of that decision, submit to the Director either a proposed written amendment or a description of an amendment to be proposed that meets the requirements of the Act and this chapter, and a timetable for enactment which is consistent with established administrative or legislative procedures in the State.

(2) If the State regulatory authority does not submit the proposed amendment or description and the timetable for enactment within 60 days from the receipt of the notice, or does not subsequently comply with the submitted timetable, or if the amendment is not approved under this Section, the Director shall begin proceedings under 30 CFR Part 733 to either enforce that part of the State program affected or withdraw approval, in whole or in part, of the State program and implement a Federal program.

(g) Whenever changes to laws or regulations that make up the approved State program are proposed by the State, the State shall immediately submit the proposed changes to the Director as an amendment. No such change to laws or regulations shall take effect for purposes of a State program until approved as an amendment.

(h) The following procedures, time schedules and criteria for approval and disapproval shall apply to State program amendments.

(1) Within ten days after receipt of a State program amendment from a State regulatory authority, the Director will publish a notice of receipt of the amendment in the FEDERAL REGISTER.

(2) The FEDERAL REGISTER notice announcing the receipt of the amendment will indicate that the amendment(s) is being reviewed by the Director and will include the following:

(i) The text or a summary of the amendment(s) proposed by the regulatory authority:

(ii) Addresses where copies of the proposed amendment(s) may be obtained if the text is not included in the FEDERAL REGISTER notice and that each requestor may receive, free of charge, one single copy of proposed amendment(s) from the Director.

(iii) Date(s) of public comment period(s) and addresses where public comments should be directed;

(iv) Dates and locations of public hearing(s) and/or meeting(s) if public hearing(s) and/or meeting(s) are to be held; and

(v) A schedule for review and action on the amendment(s).

(3) A minimum public comment period of 30 days will be provided for each proposed State program amendment, except a 15 day public comment period may be provided where an amendment concerns changes in State law, regulations or the procedures contained in the approved program that are analogous to changes in SMCRA and/or implementing regulations: *Provided,* That the notice of receipt published in the FEDERAL REGISTER includes the full text of the proposed amendment: *And provided,* That all applicable provisions of 43 CFR Part 14 are complied with.

(4) Public hearings may be provided at the discretion of the Director and shall be held no sooner than five days before the close of the public comment period. The comment period shall end on a date following any public hearing scheduled to be held.

Public hearing plans will be announced in the notice of receipt of the amendment published in the FEDERAL REGISTER. In determining whether to hold a public hearing, the Director will consider the subject of the amendment, its complexity and public hearing and meetings conducted by the State regulatory authority prior to submission of the amendment for OSM approval. When State regulatory authority public hearings or meetings are accepted in lieu of an OSM hearing, the State regulatory authority shall provide to the Director a complete record of any hearings or meetings including transcripts, written presentations, exhibits and copies of all comments. Hearings shall be informal and follow legislative procedures. The format and the rules of procedure for each hearing shall be determined by the Director and published in the notice required by paragraph (h)(1) of this section.

(5) Upon the close of the public comment period, the transcript, written presentations, exhibits and copies of all comments shall be transmitted to the Director.

(6) The Director shall consider all relevant information, including any information obtained from public hearings and comments, and shall approve or disapprove the amendment request within 30 days after the close of the public comment period established in accordance with § 732.17(h)(3).

(7) If the Director disapproves the amendment request, the State regulatory authority will have 30 days after publication of the Director's decision to resubmit a revised amendment request for consideration by the Director.

(8) The Director will approve or disapprove amendment resubmissions within 30 days after receipt. There shall be a public comment period of not less than 15 days from the date of publication of the notice of receipt of the revised amendment. If the scope of the amendment has been expanded beyond that of the initial amendment request the Director may approve/disapprove portions of the initial amendment request and subject the remainder to review and approval procedures outlined in this paragraph or treat the entire amendment request as a new request and initiate the review procedures of this section.

(9) The applicable criteria for approval or disapproval of State programs set forth in § 732.15 shall be utilized by the Director in approving or disapproving State program amendments.

(10) State program amendments shall not be approved until the Director has—

(i) Solicited and publicly disclosed the views of the Administrator of the Environmental Protection Agency, the Secretary of Agriculture, and the heads of other Federal agencies concerned with or having special expertise relevant to the program amendment(s) as proposed; and

(ii) Obtained written concurrence of the Administrator of the Environmental Protection Agency with respect to those aspects of a State program amendment(s) which relate to air or water quality standards promulgated under the authority of the Clean Water Act, as amended (33 U.S.C. 1251 *et seq.*), and the Clean Air Act, as amended (42 U.S.C. 7401 *et seq.*).

(11) All decisions approving or disapproving program amendments shall be

published in the FEDERAL REGISTER and shall be effective upon publication unless the notice specifies a different effective date. The decision approving or disapproving program amendments will be published in the FEDERAL REGISTER within 10 days after the date of the Director's decision.

(12) The Director shall complete actions on amendment requests in accordance with the schedule developed under paragraph (h)(2)(v); *However*, final action on all amendment requests must be completed within six months after receipt of the proposed amendments from the State.

[44 FR 15326, Mar. 13, 1979, as amended at 46 FR 7909, Jan. 23, 1981; 47 FR 26366 and 26367, June 17, 1982]

PART 733—MAINTENANCE OF STATE PROGRAMS AND PROCEDURES FOR SUBSTITUTING FEDERAL ENFORCEMENT OF STATE PROGRAMS AND WITHDRAWING APPROVAL OF STATE PROGRAMS

Sec.
733.1 Scope.
733.10 Information collection.
733.11 General requirements for maintaining State programs.
733.12 Procedures for substituting Federal enforcement of State programs or withdrawing approval of State programs.
733.13 Factors to be considered in deciding whether to substitute Federal enforcement for State programs or to withdraw approval of State programs.

AUTHORITY: Secs. 501(b), 503, 504, 517 and 521, Pub. L. 95-87 (30 U.S.C. 1251(b), 1253, 1254, 1267 and 1271).

SOURCE: 44 FR 15328, Mar. 13, 1979, unless otherwise noted.

§ 733.1 Scope.

This part establishes requirements for the maintenance of State programs and procedures for substituting Federal enforcement of State programs and withdrawing approval of State programs.

§ 733.10 Information collection.

The information collection requirement contained in 30 CFR 733.12(a)(2) has been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned clearance number 1029-0025. The information required is needed by OSM to verify the allegations in a citizen request to evaluate a State program and to determine whether an evaluation should be undertaken.

[47 FR 26366, June 17, 1982]

§ 733.11 General requirements for maintaining State programs.

States with an approved State program shall implement, administer, enforce and maintain it in accordance with the Act, this chapter and the provisions of the approved State program.

§ 733.12 Procedures for substituting Federal enforcement of State programs or withdrawing approval of State programs.

(a) *Evaluation.* (1) The Director shall evaluate the administration of each state program at least annually.

(2) Any interested person may request the Director to evaluate a State program. The request shall set forth a concise statement of the facts which the person believes establishes the need for evaluation. The Director shall verify the allegations and determine within 60 days whether or not the evaluation shall be made and mail a written decision to the requestor.

(b) If the Director has reason to believe that a State is not effectively implementing, administering, maintaining or enforcing any part of its approved State program, the Director shall promptly notify the State regulatory authority in writing. The Director's notice shall—

(1) Provide sufficient information to allow the State regulatory authority to determine what portions of the program the Director believes are not being effectively implemented, administered, maintained, or enforced;

(2) State the reasons for such belief; and

(3) Specify the time period for the State regulatory authority to accomplish any necessary remedial actions.

(c) The Director shall provide the State regulatory authority an opportunity for an informal conference if the State requests an informal conference within 15 days after the expiration of the time period specified in paragraph (b)(3) of this section. The informal conference may pertain to the facts or the time period for accomplishing remedial actions as specified by the Director's notification.

(d) If an informal conference is not held under paragraph (c) of this section, or if, following such a conference, the Director still has reason to believe that the State is failing to adequately implement, administer, maintain or enforce a part or all of a State program, the Director shall give notice to the State and to the public, specifying the basis for that belief and shall hold a public hearing in the State within 30 days of the expiration of the time period specified in paragraph (b)(3) of this section or as modified at the informal conference held under paragraph (c) of this section.

(e) The State will continue to enforce its approved program unless upon completion of the hearing under paragraph (d) of this section and based upon the review of all available information, including the hearing transcript, written presentations and written comments, the Director finds that the State has failed to implement, administer, maintain or enforce effectively all or part of its approved State program. If the Director finds further that the State has not demonstrated its capability and intent to administer the State program, the Director shall either—

(1) Substitute for the State regulatory authority direct Federal enforcement of all or part of the State program in accordance with paragraph (f) of this section; or

(2) Recommend to the Secretary that he or she withdraw approval of the State program, in whole or in part, in accordance with paragraph (g) of this section. The recommendation shall be accompanied by all relevant information and shall include the reasons for the recommendation.

(f) *Substituted Federal enforcement.* (1) The Director shall give public notice of a finding under paragraph (e) of this section and specify the extent to which the Director is instituting direct Federal enforcement of a State program.

(2) During the period beginning with the public notice and ending when the State satisfies the Director that it will enforce the State program effectively, the Director shall enforce those portions of the State program and any additional regulations that the Office has adopted as necessary to enable the Director to perform his or her duties. To the extent the Director has assumed direct Federal enforcement of the State program, the Director shall—

(i) Enforce any permit condition required under the Act;

(ii) Issue any new or revised permit pursuant to any additional regulation that the Director may promulgate at the time of assumed enforcement; and

(iii) Conduct inspections and issue notices, orders and assessments of penalties as may be necessary for compliance with those permit conditions, the Act and the State program in accordance with Subchapter L.

(3) In the case of a State permittee who has met his or her obligations under an existing State permit and who did not willfully secure the issuance of that permit through fraud or collusion, the Director shall give the permittee a reasonable time to conform ongoing surface mining and reclamation operations to the requirements of the Act, before suspending or revoking the State permit.

(g) *Withdrawing approval of State program.* (1) Upon recommending withdrawal of approval of a State program to the Secretary, the Director shall institute direct Federal enforcement in accordance with the requirements of paragraph (f) of this section.

(2) Upon receipt of the Director's recommendation and accompanying information under paragraph (e)(2) of this section the Secretary shall either—

(i) Withdraw approval of the State program in whole or in part if the Secretary finds that failure by the State to administer or enforce part or all of its State program cannot effectively be remedied by substitution of direct Federal enforcement for all or part of the State program, or

(ii) Instruct the Director to continue direct Federal enforcement in accordance with paragraph (f) of this section.

(3) The Secretary shall give public notice of a finding under paragraph (g)(2)(i) of this section, and specify the extent to which approval of a State program is being withdrawn. Not later than the issuance of the notice, the Director shall propose promulgation of, and thereafter promulgate and implement a Federal program for the affected State, in accordance with 30 CFR Part 736.

[44 FR 15328, Mar. 13, 1979, as amended at 47 FR 26366, June 17, 1982]

§ 733.13 Factors to be considered in deciding whether to substitute Federal enforcement for State programs or to withdraw approval of State programs.

The record of the State in fulfilling the conditions of the original approval or adjusting to new circumstances, in accordance with requirements of the Act and this chapter, the hearings transcripts, written presentations and comments shall be considered in evaluating the maintenance, administration, or enforcement of a State program for purposes of determining whether to substitute direct Federal enforcement of the State program or to withdraw approval of part or all of the program.

[44 FR 15328, Mar. 13, 1979, as amended at 47 FR 26366, June 17, 1982]

PART 735—GRANTS FOR PROGRAM DEVELOPMENT AND ADMINISTRATION AND ENFORCEMENT

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AUTHORITY: Secs. 201, 501, and 502, Pub. L. 95-87, 91 Stat. 445 (30 U.S.C. 1201).

SOURCE: 42 FR 62706, Dec. 13, 1977, unless otherwise noted. Redesignated at 44 FR 15312, Mar. 13, 1979.

EDITORIAL NOTE: For nomenclature changes to this part, see 47 FR 38590, Aug. 31, 1982.

§ 735.1 Scope.

This part sets forth policies and procedures for grants to States to—

(a) Develop State programs for the regulation and control of surface coal mining and reclamation operations;

(b) Administer and enforce State programs for the regulation and control of surface coal mining and reclamation operations; and

(c) Administer cooperative agreements for State regulation of surface coal mining and reclamation operations on Federal lands.

(d) Fund the Small Operator Assistance Program established under Section 507(c) of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201) and described in Part 795 of this chapter.

[42 FR 62706, Dec. 13, 1977. Redesignated at 44 FR 15312, Mar. 13, 1979 and amended at 47 FR 38491, Aug. 31, 1982]

§ 735.2 Objectives.

The objectives of assistance under this part are—

(a) To assist the States in meeting the costs of administering reclamation and enforcement programs consistent with the Act;

(b) To encourage the States to build strong reclamation and enforcement programs; and

(c) To encourage the States to assume jurisdiction over the regulation of surface coal mining and reclamation operations.

§ 735.3 Authority.

Section 705 of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201) authorizes the Secretary to make grants to States for developing, administering, and enforcing State regulatory programs.

§ 735.4 Responsibility.

(a) The Director shall administer the State grant program for the development, administration, and enforcement of State programs under this part.

(b) The Director or his authorized designee shall receive, review and approve grant applications under this part.

[42 FR 62706, Dec. 13, 1977. Redesignated at 44 FR 15312, Mar. 13, 1979, and amended at 47 FR 38491, Aug. 31, 1982]

§ 735.5 Definitions.

As used in this part, agency means the State agency designated by the Governor to receive and administer grants under this part.

§ 735.10 Information collection.

(a) The information collection and retention requirements in 30 CFR 735.13 (a) and (b), 735.16(e), 735.18, 735.26 and 735.27 were approved by the Office of Management and Budget (OMB) under 44 U.S.C. 3507 and assigned clearance numbers for §§ 735.13 (a) and (b); SF 424, 1029-0016; OSM 50-A, 1029-0079; OSM 50-B, 1029-0078; OSM-47, 1029-0064; OSM-48, 1029-0070; OSM-51, 1029-0072; OSM-51A, 1029-0074; OSM-51B, 1029-0075; OSM-51C, 1029-0069; for Sections 735.16(e) and 735.18; SF 269, 1029-0017; OSM-51, 1029-0072; SF 271, 1029-0073; OSM-51A, 1029-0074; OSM-51B, 1029-0075; OSM-51C, 1029-0069; OSM-60, 1029-0076; OSM-62, 1029-0077; and OSM-63, 1029-0068; for Section 735.26; and Section 735.27 which was included in the above clearance numbers.

(b) The information required by 30 CFR Part 735 will be used by OSM's Headquarters and State offices in administering, evaluating and auditing its State reimbursement grants for program development and administration and enforcement to insure that the requirements of OMB Circular A-102 and the Surface Mining Control and Reclamation Act are met. The information required by 30 CFR Part 735 is mandatory.

[47 FR 38491, Aug. 31, 1982]

§ 735.11 Eligibility for program development grants.

(a) *Designation of State agency.* In order to receive a program development grant the Governor of a State shall designate in writing to the Director one agency to submit the grant applications, and to receive and administer the grants.

(b) *Periods covered by program development grants.* (1) An agency may apply for a program development grant for any period for which it does not have an approved State program. This is limited to periods during—

(i) The initial development of a State program;

(ii) The revision of a State program which has been disapproved by the Secretary; and

(iii) The revision of a State program from which the Secretary has withdrawn his approval.

(2) The Director shall limit grants for (b)(1) (ii) and (iii) of this paragraph to the costs of making revisions necessary to secure approval of the State programs.

(3) The Director shall not approve grants for costs incurred prior to August 3, 1977.

(Secs. 201, 501, 503, 705, Pub. L. 95-87, 91 Stat. 450, 467, 470, 520, (30 U.S.C. 1211, 1251, 1253, 1295))

[42 FR 62706, Dec. 13, 1977; 43 FR 2722, Jan. 19, 1977. Redesignated at 44 FR 15312, Mar. 13, 1979, and amended at 45 FR 2804, Jan 14, 1980]

§ 735.12 Eligibility for administration and enforcement grants.

(a) *Approved program required.* In order to receive a grant to administer and enforce a State program, the State must have an approved State regulatory program.

(b) *Designation of a State agency.* In order to receive a grant to administer and enforce a State program, the Governor must designate a single agency to receive and administer administration and enforcement grants, including cooperative agreement grants described in § 735.16 of this part.

(c) *Nondiscrimination.* The agency shall monitor the compliance activity of its subrecipients with respect to the nondiscrimination provisions in § 735.21(a)(4) of this part.

§ 735.13 Submission of estimated annual budgets and allocation of funds.

(a) Budget summaries for Federal budget. For each fiscal year, the agency shall submit to the Director or his authorized designee 18 months prior to the Federal fiscal year for which the grant will be requested, a projection of its program budget (personnel and fringe benefits, travel, equipment and supplies, contractual, indirect charges, and other), including the costs of administering State-Federal cooperative agreements pursuant to § 211.75 of this title, and any aircraft which the agency proposes to acquire. The Director will use these budget summaries in preparing the Federal budget estimates which he is required to submit.

(b) Updated budget summary. For each fiscal year, the agency shall submit to the Director or his authorized designee a current program budget (personnel and fringe benefits, travel, equipment and supplies, contractual, indirect charges, and other) three months prior to the beginning of the Federal fiscal year for which a grant will be requested.

(c) *Allocation of funds.* (1) The Director shall allocate to the agencies the full amount requested and approved in the States' revised or actual budgets provided that the amount available in the Federal budget is sufficient.

(2) If the funds available for grants are insufficient to cover the total grant needs, including cooperative agreement grants, the Director shall allocate the funds available according to the proportion of each requested and approved agency's budget to the total of all agencies' requested and approved budgets.

(3) Allocation of a specific amount of funds to an agency does not assure that grants for that amount will be approved. Each agency must apply for and secure approval of grants in accordance with the requirements of this part.

(4) The Director shall reallocate any funds which are not requested by agencies as of June 1 of that year. Such funds shall be allocated primarily to those agencies which have received less than the allowable percentage of their eligible costs.

(5) Agencies which are allocated such additional funds may submit new or revised grant applications for the additional amounts on or before August 15, of that year.

[42 FR 62706, Dec. 13, 1977. Redesignated at 44 FR 15312, Mar. 13, 1979, and amended at 47 FR 38491, Aug. 31, 1982]

§ 735.14 Coverage of grants.

(a) *Program development grants.* An agency may use grant money under this part to cover the costs of developing—

(1) New or revised State laws, regulations, and procedures;

(2) Revised or expanded inspection systems;

(3) Training programs for inspectors and other personnel;

(4) New or revised organizational structures;

(5) Information and communications systems, including data processing systems;

(6) A planning process including a data base and information system to receive and act upon petitions to designate lands unsuitable for mining;

(7) An application for the initial administration and enforcement grant to the extent not covered by indirect costs or other cost items;

(8) Other components necessary to obtain an approved State program, as mutually agreed upon by the Director or his authorized designee and the agency receiving a grant.

(b) *Administration and enforcement grants.* An agency may use grant money under this part to cover the costs of—

(1) Administering an approved State regulatory program;

(2) Providing supporting and administrative services required by the State regulatory program;

(3) Providing equipment required for the regulatory program and its support, either through use charges or direct purchase. Equipment charges and purchases will be allowed in accordance with Federal Management Circular 74-4, "Cost principles applicable to grants and contracts with State and local governments," (34 CFR Part 255) and Office of Management and Budget Circular No. A-102, "Uniform administrative requirements for grants-in-aid to State and local governments" (42 FR 45828).

§ 735.15 Amount of grants.

(a) *Amount of program development grants.* (1) For the first year of a program development grant the Director or his authorized designee shall approve grants for not more than 80 percent of the total of agreed upon costs pursuant to § 735.14(a).

(2) For the second year of a program development grant the Director or his authorized designee shall approve grants for not more than 60 percent of the total agreed upon costs pursuant to § 735.14(a).

(3) For the third year and each following year of a program development grant the Director or his authorized designee shall approve grants for not more than 50 percent of the total agreed upon costs pursuant to § 735.14(a).

(b) *Amount of administration and enforcement grants.* (1) If no program development grant has been awarded, the Director or his authorized designee may approve the first administration and enforcement grant for not more than 80 percent of the agreed upon costs for administration and enforcement of the program.

(2) If a program development grant has been awarded for only 1 year, the Director or his authorized designee may approve an administration and enforcement grant for 60 percent of the agreed upon costs for administration and enforcement of the program.

(3) If a program development grant has been awarded for more than 1 year but less than 2 years, the Director or his authorized designee may approve the first administration and enforcement grant for 60 percent for that proportion remaining in the second year and for 50 percent for the proportion allocated to the third year.

(4) For the third and following years, the Director or his authorized designee may approve administration and enforcement grants for 50 percent of the agreed upon costs for administration and enforcement of the program.

(Secs. 201, 501, 503, 705, Pub. L. 95-87, 91 Stat. 450, 467, 470, 520 (30 U.S.C. 1211, 1251, 1253, 1295))

[42 FR 62706, Dec. 13, 1977. Redesignated at 44 FR 15312, Mar. 13, 1979, and amended at 45 FR 2804, Jan. 14, 1980]

§ 735.16 Special provisions for States with cooperative agreements.

(a) *Eligibility.* The Director may approve additional grants to States which have cooperative agreements pursuant to § 211.75 of this title for State regulation of surface coal mining and reclamation operations on Federal lands. This includes—

(1) States which had cooperative agreements on August 3, 1977, which have been modified to comply with the initial regulatory program; and

(2) States which enter into cooperative agreements following approval of the State's regulatory program.

(b) *Coverage of grants.* An agency may use cooperative agreement grants to carry out the functions assigned to the State under the agreement.

(c) *Amounts of grants.* The Director or his authorized designee may approve grants for the approximate amount which he determines the Federal Government would have expended for regulation of coal mining on the Federal lands being regulated by the State, except that no grant may exceed the actual costs to the State.

(d) *Grant periods.* The Director or his authorized designee shall normally approve a grant for a period of one year or less. Consecutive grants shall be awarded to fund approved programs.

(e) *Application procedures.* (1) States with cooperative agreements in effect on August 3, 1977, may apply for cooperative agreement grants using the procedures set forth in § 735.18 (a), (b) and (d).

(2) States with cooperative agreements established in conjunction with approved State regulatory programs may apply for cooperative agreement grants by including a supplement to an annual administration and enforcement grant application submitted according to § 735.18. The State shall include in the supplemental section:

(i) A separate budget summary for the costs of the cooperative agreement in the format specified by OSM; and

(ii) A separate narrative, in the format specified by OSM, describing the specific activities required by the cooperative agreement for the period for which the grant is requested.

(f) *Other requirements.* The procedures and requirements set forth in §§ 735.17 through 735.26 are applicable to cooperative agreement grants.

[42 FR 62706, Dec. 13, 1977; 43 FR 2722, Jan. 19, 1977. Redesignated at 44 FR 15312, Mar. 13, 1979, and amended at 47 FR 38491, Aug. 31, 1982]

§ 735.17 Grant periods.

The Director or his authorized designee shall normally approve a grant for a period of one year or less. Consecutive grants shall be awarded to fund approved programs.

[47 FR 38491, Aug. 31, 1982]

§ 735.18 Grant application procedures.

(a) The agency shall submit its application (three copies) to the Director or his authorized designee at least sixty days prior to the beginning of the intended grant period, or as soon thereafter as possible.

(b) The agency shall use the application forms and procedures specified by OSM in accordance with Office of Management and Budget Circular No. A-102. *No* pre-application is required. Each application must include the following:

(1) Part I, Application Form Coversheet, SF 424.

(2) Part II, Project Approval Information.

(i) For non-construction grants use Form OSM-50A, Project Approval Information—Section A.

(ii) For construction grants use Form OSM-50A, Project Approval Information—Section A, and Form OSM-50B, Project Approval Information—Section B.

(3) Part III, Budget Information.

(i) For non-construction grants use Form OSM-47, Budget Information Report, with a narrative explanation of computations.

(ii) For construction grants use Form OSM-48, Budget Information—Construction, with a narrative explanation of computations.

(4) Part IV, Program Narrative Statement, Form OSM-51, providing the narrative for the goals to be achieved for both construction and non-construction grants.

(i) Form OSM-51 is supplemented by completion of Column 5A of Forms OSM-51A and OSM-51B which reports the quantitative Program Management information of the Administration and Enforcement grants.

(ii) Form OSM-51 is supplemented by completion of Column 5A of Form OSM-51C which reports the quantitative Program Management information of the Small Operator Assistance Program Administration and Operational grant.

(5) Part V, The standard assurances for non-construction activities or construction activities as specified in Office of Management and Budget Circular No. A-102, Attachment M.

(c) For program development grant applications, agencies shall include:

(1) An analysis and evaluation of the current State laws and changes required therein to conform to the requirements of the Surface Mining Control and Reclamation Act of 1977, unless previously submitted under Part 725;

(2) A description of the changes expected to be requiredin State regulations, organization, staffing, training and other policies and operations in order to develop a State program which can be approved; and

(3) A program to develop the legislation, regulations, procedures, organization, staffing, training materials, and other program elements necessary to obtain program approval.

(d) For administration and enforcement grants and cooperative agreement grants, agencies shall include:

(1) A description of the specific operations in the approved program which

will be implemented during the period for which the grant is requested.

(2) A description and justification of any major equipment (equipment with a unit acquisition cost of $500 or more and having a life of more than two years) which the agency proposes to acquire with the grant.

(e) The Director or his authorized designee shall notify the agency within thirty days after the receipt of a complete application, or as soon thereafter as possible, whether it is or is not approved. If the application is not approved, the Director or his authorized designee shall set forth in writing the reasons for disapproval and may propose modifications if appropriate. The agency may resubmit the application. The Director or his authorized designee shall process the revised application as an original application.

[47 FR 62706, Dec. 13, 1977. Redesignated at 44 FR 15312, Mar. 13, 1979, and amended at 47 FR 38492, Aug. 31, 1982]

§ 735.19 Grant agreement.

(a) If the Director or his authorized designee approves an agency's grant application, the Director or his authorized designee shall prepare a grant agreement which includes—

(1) The approved scope of the program to be covered by the grant;

(2) The approved budget, including the Federal share;

(3) Commencement and completion dates for the segment of the program covered by the grant and for major phases of the program to be completed during the grant period; and

(4) Permissible transfers of funds to other State agencies.

(b) The Director or his authorized designee may permit an agency to assign functions and funds to other State agencies. The Director or his authorized designee shall require the grantee agency to retain responsibility for overall administration of the grant, including use of funds, accomplishment of functions and reporting.

(c) Pre-agreement costs for program development grants shall be allowed only as specified in the grant agreement.

(d) The Director or his authorized designee shall transmit four copies of the grant agreement by certified mail, return receipt requested, to the agency for signature. The agency shall execute the grant agreement and return all copies of it within 3 calendar weeks after receipt, or within an extension of such time that may be granted by the Director or his authorized designee.

(e) The Director or his authorized designee shall sign the grant agreement upon its return from the agency and return one copy to the agency. The grant is effective and constitutes an obligation of Federal funds in the amount and for the purposes stated in the grant agreement at the time the Director or his authorized designee signs the agreement.

(f) Neither the approval of a program nor the award of any grant will commit or obligate the United States to award any continuation grant or enter into any grant amendment, including grant increases to cover cost overruns.

§ 735.20 Grant amendments.

(a) A grant amendment is a written alteration in the grant amount, grant terms or conditions, budget or period, or other administrative, technical, or financial agreement whether accomplished on the initiative of the agency or the Director or his authorized designee, or by mutual action of the agency and the Director or his authorized designee.

(b) The agency shall promptly notify the Director or his authorized designee in writing of events or proposed changes which may require a grant amendment, such as—

(1) Rebudgeting;

(2) Changes which may affect the approved scope or objective of a program; or

(3) Changes which may increase or substantially decrease the total cost of a program.

(c) The Director or his authorized designee shall approve or disapprove each proposed amendment within thirty days of receipt, or as soon thereafter as possible, and shall notify the agency in writing of the approval or disapproval of the amendment.

(d) The date the Director or his authorized designee signs the grant amendment establishes the effective date of the action. If no time period is specified in the grant amendment, then the amendment applies to the entire grant period.

[42 FR 62706, Dec. 13, 1977. Redesignated at 44 FR 15312, Mar. 13, 1979, and amended at 47 FR 38492, Aug. 31, 1982]

§ 735.21 Grant reduction and termination.

(a) *Conditions for reduction or termination.* (1) If an agency violates the terms of a grant agreement, the Director or his authorized designee may reduce or terminate the grant.

(2) If an agency fails to implement, enforce or maintain an approved program, or cooperative agreement, the Director or his authorized designee shall terminate the administration and enforcement grant or cooperative agreement grant.

(3) If an agency fails to implement, enforce or maintain only a part of the program, the Director or his authorized designee shall reduce the grant to the amount of the program being operated by the agency.

(4) If an agency is not in compliance with the following nondiscrimination provisions, the Director or his authorized designee shall terminate the grant—

(i) Title VI of the Civil Rights Act of 1964 (78 Stat. 252). Nondiscrimination in Federally Assisted Programs, which provides that no person in the United States shall on the grounds of race, color or national origin be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance, and the implementing regulations at 43 CFR Part 17.

(ii) Executive Order 11246, as amended by Executive Order 11375, Equal Employment Opportunity, requiring that employees or applicants for employment not be discriminated against because of race, creed, color, sex, or national origin, and the implementing regulations at 41 CFR Part 60.

(iii) Section 504 of the Rehabilitation Act of 1973, as amended by Executive Order 11914, Nondiscrimination With Respect to the Handicapped in Federally Assisted Programs.

(5) If an agency fails to enforce the financial interest provisions of part 706 of this chapter the Director shall terminate the grant.

(6) If an agency fails to submit reports required by this part or Parts 705 and 720 of this chapter the Director shall reduce or terminate the grant.

(b) *Grant reduction and termination procedures.* (1) The Director or his authorized designee shall give at least 10 days written notice to the agency by certified mail, return receipt requested, of intent to reduce or terminate a grant. The Director or his authorized designee shall include in the notice the reasons for the proposed action and the proposed effective date of the action.

(2) The Director or his authorized designee shall afford the agency opportunity for consultation and remedial action prior to reducing or terminating a grant.

(3) The Director or his authorized designee shall notify the agency of the termination or reduction of the grant in writing by certified mail, return receipt requested.

(4) Upon termination the agency shall refund or credit to the United States that portion of the grant money paid or owed to the agency and allocated to the terminated portion of the grant. However any portion of the grant that is required to meet commitments made prior to the effective date of termination shall be retained by the agency.

(5) The agency shall reduce the amount of outstanding commitments insofar as possible and report to the Director or his authorized designee the uncommitted balance of funds awarded under the grant.

(6) Upon notification of intent to terminate the agency shall not make any new commitments without the approval of the Director or his authorized designee.

(7) The Director or his authorized designee may allow termination costs as determined by applicable Federal cost principles listed in Federal Management Circular 74-4.

(c) *Appeals.* (1) An agency may appeal the Director or his authorized designee's decision to reduce or terminate a grant to the Director within 30 days of the Director or his authorized designee's decision.

(2) An agency shall include in an appeal—

(i) The decision being appealed, and

(ii) The facts which the agency believes justify a reversal or modification of the decision.

(3) The Director shall act upon appeals within 30 days of their receipt, or as soon thereafter as possible.

§ 735.22 Audit.

The agency shall arrange for an independent audit no less frequently than once every two years, pursuant to the requirements of Office of Management and Budget Circular No. A-102, Attachment P. The audits will be performed in accordance with the "Standards for Audit of Governmental Organizations, Programs, Activities, and Functions" and the "Guidelines for Financial and Compliance Audits of Federally Assisted Programs" published by the Comptroller General of the United States and guidance provided by the cognizant Federal audit agency.

[47 FR 38492, Aug. 31, 1982]

§ 735.24 Allowable costs.

The Director or his authorized designee shall determine costs which may be reimbursed according to Office of Management and Budget Circular No. A-87.

[47 FR 38492, Aug. 31, 1982]

§ 735.25 Financial management.

(a) The agency shall account for grant funds in accordance with the requirements of Office of Management and Budget Circular No. A-102. Agencies shall use generally accepted accounting principles and practices, consistently applied. Accounting for grant funds must be accurate and current.

(b) The agency shall adequately safeguard all funds, property, and other assets and shall assure that they are used solely for authorized purposes.

(c) The agency shall provide a comparison of actual amounts spent with budgeted amounts for each grant.

(d) When advances are made by a letter-of-credit method, the agency shall make drawdowns from the U.S. Treasury through its commerical bank as closely as possible to the time of making the disbursements.

(e) The agency shall support accounting records by source documentation.

(f) The agency shall design a systematic method to assure timely and appropriate resolution of audit findings and recommendations.

§ 735.26 Reports.

(a) The agency shall, for each grant made under this part, submit semiannually to the Director or his authorized designee a Financial Status Report, Form 269 for non-construction grant activities in accordance with Office of Management and Budget Circular No. A-102, Attachment H and OSM requirements. This report shall be accompanied by a Performance Report, Form OSM-51 comparing actual accomplishments to the goals established for the period, prepared according to Attachment I of OMB Circular No. A-102 and OSM requirements. The agency shall also submit semiannually a separate Outlay Report and Request for Reimbursement for Construction Programs, Form 271, and accompanying narrative performance report comparing actual accomplishments with planned goals on grant funded construction activities.

(b) The Director or his authorized designee shall require through the grant agreement that semiannual reports describe the relationship of financial information to performance and productivity data, including unit cost information. This quantitative information will be reported on Forms OSM-51A and OSM-51B or OSM-51C, Quantitative Program Management Information, as applicable.

(c) The Director or his authorized designee shall require that when a grant is closed out in accordance with Attachment L to Office of Management and Budget Circular No. A-102, the following actions are taken:

(1) The grantee shall account for any property acquired with grant funds or received from the Government in accordance with the provi-

sions of Attachment N to Office of Management and Budget Circular No. A-102. This may be accomplished by the submission of the Report of Government Property, Form OSM-60.

(2) The grantee shall submit a final financial report and thus release OSM from obligations under each grant or cooperative agreement that is being closed out.

[47 FR 38492, Aug. 31, 1982]

§ 735.27 Records.

(a) The agency shall maintain complete records in accordance with Office of Management and Budget Circular No. A-102. This includes books, documents, maps, and other evidence and accounting procedures and practices, sufficient to reflect properly—

(1) The amount, receipt, and disposition by the agency of all assistance received for the program.

(2) The total costs of the program, including all direct and indirect costs of whatever nature incurred for the performance of the program for which the grant has been awarded.

(b) Subgrantees and contractors, including contractors for professional services, shall maintain books, documents, papers, maps, and records which are pertinent to specific grant award.

(c) The agency's records and the records of its subgrantees and contractors, including professional services contracts, shall be subject at all reasonable times to inspection, reproduction, copying, and audit by the Office, the Department of the Interior, the Comptroller General of the United States, the Department of Labor or any authorized representative.

(d) For completed or terminated grants the agency, subgrantees, and contractors shall preserve and make their records available to the Office, the Department of the Interior, the Comptroller General of the United States, Department of Labor, or any authorized representative pursuant to OMB Circular No. A-102.

§ 735.28 Disclosure of information.

All grant applications received by the Director or his authorized designee constitute agency records. As such, their release may be requested by any member of the public under the Freedom of Information Act, 5 U.S.C. 552, and shall be disclosed unless exempt from disclosure under 5 U.S.C. 552(b).

PART 736—FEDERAL PROGRAM FOR A STATE

Sec.

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AUTHORITY: Secs. 501, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 521, 522, 525 and 705, Pub. L. 95-87 (30 U.S.C. 1251, 1253-1269, 1271, 1272, 1275 and 1295).

SOURCE: 44 FR 15329, Mar. 13, 1979, unless otherwise noted.

§ 736.1 Scope.

This part establishes standards and procedures for the promulgation, implementation, maintenance, administration, revision and termination of a Federal program for a State for coal exploration and surface coal mining and reclamation operations on non-Federal and non-Indian lands within that State.

§ 736.11 General procedural requirements.

(a) *Promulgation.* (1) The Director shall promulgate and, subject to the provisions of this part, implement a Federal program for a State if the Director reasonably expects coal exploration or surface coal mining and reclamation operations to exist on non-Federal and non-Indian lands within the State at any time before June 1985, and the State fails to—

(i) Submit a State program for regulation of coal exploration and surface coal mining and reclamation operations on non-Federal and non-Indian lands within that State to the Director as provided in 30 CFR 731.12; or

(ii) Resubmit an acceptable State program within 60 days of a notice of disapproval of a State program pursuant to § 732.13(f). The Director shall not promulgate a Federal program before the expiration of the initial period allowed for submission of a State program, as provided in § 731.12.

(2) The Director shall promulgate a complete Federal program for a State upon the withdrawal of approval of an entire State program under § 733.12.

(3) The Director shall promulgate a partial Federal program for a State upon the withdrawal of approval of part of a State program under 30 CFR Part 733.

(b) *Revision.* The Director may revise a Federal program for a State, if necessary to further the purposes of the Act and the regulations adopted under the Act.

(c) *Termination.* The Director shall terminate appropriate portions of a Federal program for a State, upon approval of a State program under 30 CFR Parts 731 and 732 that replaces a complete or partial Federal program for that State.

[44 FR 15329, Mar. 13, 1979, as amended at 47 FR 26367, June 17, 1982]

§ 736.12 Public notice requirements.

Prior to the promulgation or revision of a Federal program, the Director shall give public notice as follows:

(a) Notice shall be published in the FEDERAL REGISTER at least 60 days before the date of the hearing required under § 736.13 and shall include—

(1) A statement of the bases and purposes of the proposed program or revision;

(2) The proposed text of the regulations of the program or revision;

(3) The proposed effective date of the program or revision;

(4) The location of the OSM office and the public office in the capital city of the State where the text of the proposed program or revision and any supporting information may be reviewed or copied;

(5) If applicable, the date, time and location in the State where the Office will hold at least one public hearing under the supervision of the Director;

(6) A summary of the format and the rules of procedure of the public hearing, as required under § 736.13; and

(7) Notice of the opportunity for persons to submit, in writing, data and comments on the proposed promulgation of a Federal program to the Regional Director prior to the public hearing or at the public hearing.

(b) The Regional Director shall publish notice at least once a week for 3 weeks within the 30 days before the hearing in at least one newspaper of general circulation in the coal mining area of the affected State. This notice shall be identical to the notice required under paragraph (a) of this section, except that a brief description of the contents of the proposed program or revision may be substituted for the proposed text of the regulations of the program or revision.

[44 FR 15329, Mar. 13, 1979, as amended at 47 FR 26367, June 17, 1982]

§ 736.13 Public comment.

(a) Comments shall be solicited by the Director from the Administrator of the Environmental Protection Agency, the Secretary of Agriculture, and the heads of other Federal agencies concerned with or having special expertise relevant to the proposed promulgation or revision of the program.

(b) The Director shall provide an opportunity for persons to submit, in writing, data and comments on the proposed promulgation or revision of a Federal program within 60 days after publication of the notice in the FEDERAL REGISTER.

(c) Before promulgation of a Federal program for a State, the Director shall hold at least one public hearing within the State for the purpose of affording interested persons an opportunity to submit data and comments on the proposed Federal program. In the case of a revised Federal program for a State, the opportunity to request a hearing will be provided and if one is requested, a public hearing will be held. The hearings shall follow legislative procedures and include a presentation of the proposed program or revision by the Director and the compilation of an open record of the hearing.

(d) Additional hearings or additional time for submitting comments after the hearing may be allowed by the Director, if considered appropriate by the Director.

(e) Upon completion of the hearings, the hearing transcripts, exhibits submitted, written presentations and copies of all public comments shall be transmitted to the Director.

(f) Copies of all written comments received and the transcripts of the public hearing shall be made available for public inspection and copying at the appropriate OSM office and at a public office in the capital city of the State.

[44 FR 15329, Mar. 13, 1979, as amended at 47 FR 26367, June 17, 1982]

§ 736.14 Director's decision.

(a) After considering all relevant information received under § 736.13, the Director shall decide whether to promulgate or revise a Federal program for the State.

(b) The Director shall publish the decision in the FEDERAL REGISTER, including a statement of the basis and purpose for the decision, the regulations of the Federal program for the State or revision thereof, and the effective date of the program or revision.

§ 736.15 Implementation, enforcement, and maintenance of a Federal program.

(a) The Director shall implement, administer, enforce, and maintain a Federal program or any revision thereto not later than 30 days after a Federal program is promulgated or revised.

(b)(1) Except as provided in paragraph (b)(2) of this section, the Director shall implement the procedures and criteria of a Federal program for a State for designating lands unsuitable for all or certain types of surface coal mining one year after a Federal program is made effective for a State.

(2) When a complete or partial Federal program is promulgated because of a State's failure to implement, maintain, or enforce adequately all or a part of its State program, all applicable portions of the Federal program for the State under this part shall be effective immediately upon implementation of the Federal program.

[48 FR 41348, Sept. 14, 1983]

§ 736.16 Federal program termination procedures.

Termination of a Federal program shall be accomplished at the same time and through the procedures for approval of a State program under 30 CFR Part 732. No Federal program shall be considered terminated until a State program has been approved by the Secretary in accordance with 30 CFR Part 732.

§ 736.17 Consolidation of procedures.

The Director may consolidate public notices, hearings, opportunity for public comment and decisions on the promulgation, revision or termination of a Federal program for a State under this part, with public notices, opportunity for public comment and hearings on the approval, disapproval or withdrawal of a State program under 30 CFR Parts 732 through 733.

§ 736.21 General requirements of a Federal program.

(a) Any complete Federal program promulgated or revised by the Director shall include the contents identified in 30 CFR 736.22.

(b) Any partial Federal program shall include all of the contents identified in 30 CFR 736.22 to the extent that those aspects of coal exploration and surface coal mining and reclamation operations within the State are to be regulated by the Director under the partial program and are not to be regulated under the remainder of the State program that continues in effect.

§ 736.22 Contents of a Federal program.

(a) In promulgating or revising any Federal program for a State, the Director shall—

(1) Consider the nature of that State's soils, topography, climate, and biological, chemical, geological, hydro-

logical, agronomic, and other relevant physical conditions;

(2) Include any provisions that are necessary to implement the requirements of the Endangered Species Act of 1973, as amended (16 U.S.C. 531 *et seq.*), the Fish and Wildlife Coordination Act, as amended (16 U.S.C. 661-666c), the National Historic and Preservation Act of 1966 (16 U.S.C. 470), the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a), and other relevant Federal laws imposing duties upon the Secretary; and

(3) Include, if required pursuant to 30 CFR 736.23, any performance standards for the regulation of coal exploration and surface coal mining and reclamation operations more stringent than those otherwise provided for by this chapter and the Act.

(b)(1) Any Federal program for a State, including appropriate portions of a partial Federal program which is promulgated or revised by the Director, shall provide for Federal regulation of coal exploration and surface coal mining and reclamation operations on non-Federal and non-Indian lands within the State in accordance with the requirements of the Act and this Chapter, including, at a minimum, the following provisions: Parts 700, 701, 707, 761, 762, 764, 842, 843, 845, Subchapters G, J, K, and M.

(2) An exception to these requirements may be made where there is exploration but no mining in the State. In such a case, the Federal program which is promulgated must regulate coal exploration, but not mining, and shall include, at a minimum, the applicable sections of the following provisions: Parts 700, 701, 761, 762, 764, 772, 773, 775, 815, 842, 843 and 845.

(c) For the purpose of avoiding duplication, the Federal program shall include a process for coordinating the review and issuance of permits for surface coal mining and reclamation operations under the Federal program with any other Federal, State, or local planning or permit process applicable to the operations in the jurisdiction involved, including, but not limited to—

(1) The Clean Air Act, as amended (42 U.S.C. 7401 *et seq.*); Clean Water Act, as amended (30 U.S.C. 1251 *et seq.*); Resource Conservation and Recovery Act (42 U.S.C. 3251 et seq.); and

(2) Plans approved by the Administrator of the U.S. Environmental Protection Agency under sections 208 or 303(c) of the Clean Water Act, as amended (33 U.S.C. 1288, 1313(c)).

[44 FR 15329, Mar. 13, 1979, as amended at 47 FR 26367, June 17, 1982; 48 FR 44779, Sept. 30, 1983]

§ 736.23 Federal program effect on State law or regulations.

(a) Whenever a Federal program is promulgated or revised for a State, any statutes or regulations of the State regulating coal exploration or surface coal mining and reclamation operations subject to the Act shall be preempted and superseded by the Federal program insofar as they are inconsistent with the requirements of the Act and the Federal program. In promulgating or revising a Federal program for a State, the Director shall set forth in the FEDERAL REGISTER any State statute or regulation which is preempted and superseded by the Federal program.

(b) The provision of any State statute or regulation which provides for more stringent land use and environmental control and regulation of coal exploration or surface coal mining and reclamation operations than do the provisions of the Act or any regulation issued under the Act shall not be preempted and superseded by the Director and shall be incorporated into the Federal program for the State.

[44 FR 15329, Mar. 13, 1979, as amended at 47 FR 26367, June 17, 1982]

§ 736.24 Federal program effect on State funding.

(a) After the withdrawal of a State program and the promulgation and implementation of a complete Federal program for a State and extending until approval of a new State program, the Director shall not—

(1) Approve, fund or continue to fund a State abandoned mine reclamation program, under section 405(c) of the Act and 30 CFR 884.14, 884.15, 884.16 and 886.18; or,

(2) Make any grants to assist the State in administering and enforcing

State programs under the Act and 30 CFR 735.11 and 735.12.

(b) After the withdrawal of a State program in part and the promulgation and implementation of a partial Federal program for a State and extending until the approval of a complete State program the Director shall not—

(1) Approve, fund or continue to fund a State abandoned mine reclamation program, under section 405(c) of the Act and 30 CFR 884.14, 884.15, 884.16 and 886.18, unless the Director finds, in writing, that discontinuation of funding would not be consistent with achieving the purposes of the Act, and

(2) Make any grants to assist the State in administering and enforcing State programs under the Act and 30 CFR 735.12, unless the Director finds in writing that discontinuation of funding would not be consistent with achieving the purposes of the Act.

SUBCHAPTER D—FEDERAL LANDS PROGRAM

PART 740—GENERAL REQUIREMENTS FOR SURFACE COAL MINING AND RECLAMATION OPERATIONS ON FEDERAL LANDS

Sec.
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740.17 Inspection, enforcement and civil penalties.
740.19 Performance standards.

AUTHORITY: 30 U.S.C. 1201 *et seq.* and 30 U.S.C. 181 *et seq.*

SOURCE: 48 FR 6935, Feb. 16, 1983, unless otherwise noted.

§ 740.1 Scope and purpose.

This part provides for the regulation of surface coal mining and reclamation operations on Federal lands.

§ 740.4 Responsibilities.

(a) The Secretary is responsible for:

(1) Approval, disapproval or conditional approval of mining plans with respect to lands containing leased Federal coal and of modifications thereto, in accordance with the Mineral Leasing Act of 1920, as amended, 30 U.S.C. 181 *et seq.*;

(2) Execution, modification or termination of State-Federal cooperative agreements in accordance with Part 745 of this chapter; and

(3) Designation of areas of Federal lands as unsuitable for all or certain types of surface coal mining and reclamation operations, or termination of such designations, in accordance with Part 769 of this chapter.

(4) Determination of valid existing rights for surface coal mining and reclamation operations on Federal lands within the boundaries of any areas specified under section 522 (e)(1) or (2) of the Act.

(5) Determination that there are no significant recreational, timber, economic, or other values which may be incompatible with surface coal mining and reclamation operations on any Federal lands within the boundaries of any national forest under section 522(e)(2) of the Act.

(b) OSM is responsible for:

(1) Providing a decision document recommending to the Secretary approval, disapproval or conditional approval of mining plans and of modifications thereto;

(2) Approval of experimental practices on Federal lands;

(3) Inspection, enforcement and civil penalties with respect to surface coal mining and reclamation operations on Federal lands except as provided in paragraph (c)(5) of this section;

(4) Processing citizen requests for Federal inspections on Federal lands in accordance with Parts 842, 843 and 845 of this chapter; and

(5) Overseeing the State regulatory authority's administration and enforcement of the State program on Federal lands pursuant to the terms of any cooperative agreement.

(c) The following responsibilities of OSM may be delegated to a State regulatory authority under a cooperative agreement:

(1) Review and approval, conditional approval of disapproval or permit applications for surface coal mining and reclamation operations on Federal lands, revisions or renewals thereof, and applications for the transfer, sale or assignment of such permits;

(2) Consultation with and obtaining the consent, as necessary, of the Federal land management agency with respect to post-mining land use and to any special requirements necessary to protect non-coal resources of the areas affected by surface coal mining and reclamation operations;

(3) Consultation with and obtaining the consent, as necessary, of the Bureau of Land Management with respect to requirements relating to the development, production and recovery of mineral resources on lands affected by surface coal mining and reclamation operations involving leased Federal coal pursuant to 43 CFR Part 3400;

(4) Approval and release of performance bonds, liability insurance and, as applicable, Federal lessee protection bonds required for surface coal mining

and reclamation operations on Federal lands. Approval and release of Federal lessee protection bonds requires the concurrence of the Federal land management agency;

(5) Responsibilities of the regulatory authority with respect to inspection, enforcement and civil penalty activities for (i) exploration operations not subject to 43 CFR Parts 3480-3487, and (ii) surface coal mining and reclamation operations on Federal lands;

(6) Review and approval of exploration operations not subject to the requirements of 43 CFR Parts 3480-3487; and

(7) Preparation of documentation to comply with the requirements of the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), except, OSM continues to be responsible for:

(i) Determining the scope, content and format and ensuring the objectivity of NEPA compliance documents;

(ii) Making the determination of whether or not the preparation of an environmental impact statement is required.

(iii) Notifying and soliciting views of other State and Federal agencies, as appropriate, on the environmental effects of the proposed action;

(iv) Publishing and distributing draft and final NEPA compliance documents;

(v) Making policy responses to comments on draft NEPA compliance documents;

(vi) Independently evaluating NEPA compliance documents; and

(vii) Adopting NEPA compliance documents and determining Federal actions to be taken on alternatives presented in such documents.

(d) The Bureau of Land Management is responsible for:

(1) Receiving and approving exploration plans pursuant to 43 CFR Parts 3480-3487;

(2) Inspection, enforcement and civil penalties with respect to the terms and conditions of coal exploration licenses issued pursuant to 43 CFR Part 3400;

(3) Inspection, enforcement and civil penalties with respect to the terms and conditions of exploration operations subject to 43 CFR Parts 3480-3487;

(4) Reviewing the resource recovery and protection plan and modifications thereto, as required by 43 CFR Parts 3480-3487 and recommending to the Secretary approval, disapproval or conditional approval of the resource recovery and protection plan;

(5) Inspection, enforcement and civil penalties with respect to the recovery and protection of the coal resource as required by 43 CFR Parts 3480-3487;

(6) Protecting mineral resources not included in the coal lease;

(7) Issuance of exploration licenses for Federal coal subject to the requirements of 43 CFR Part 3400;

(8) Issuance of leases and licenses to mine Federal coal subject to the requirements of 43 CFR Part 3400; and

(9) Issuance, readjustment, modification, termination, cancellation, and approval of transfers of Federal coal leases pursuant to the Mineral Leasing Act and the Mineral Leasing Act for Acquired Lands of 1947, as amended, 30 U.S.C. 351 *et seq.*

(e) The Federal land management agency is responsible for:

(1) Determining post-mining land uses;

(2) Protection of non-mineral resources;

(3) Requiring such conditions as may be appropriate to regulate surface coal mining and reclamation operations under other provisions of law applicable to such lands under its jurisdiction; and

(4) Where land containing leased Federal coal is under the surface jurisdiction of a Federal agency other than the Department, concur in the terms of the mining plan approval.

[48 FR 6935, Feb. 16, 1983, as amended at 48 FR 44779, Sept. 30, 1983]

§ 740.5 Definitions.

(a) As used in this subchapter, the term:

Authorized officer means any person authorized to take official action on behalf of a Federal agency that has administrative jurisdiction over Federal lands.

Coal lease means a Federal coal lease or license issued by the Bureau of Land Management pursuant to the Mineral Leasing Act and the Federal

Acquired Lands Leasing Act of 1947 (30 U.S.C. 351 *et seq.*).

Cooperative agreement means a cooperative agreement entered into in accordance with section 523(c) of the Act and Part 745 of this chapter.

Federal land management agency means a Federal agency having administrative jurisdiction over the surface of Federal lands that are subject to these regulations.

Federal lease bond means the bond or equivalent security required by 43 CFR Part 3400 to assure compliance with the terms and conditions of a Federal coal lease.

Federal lessee protection bond means a bond payable to the United States or the State, whichever is applicable, for use and benefit of a permittee or lessee of the surface lands to secure payment of any damages to crops or tangible improvements on Federal lands, pursuant to section 715 of the Act.

Lease terms, conditions and stipulations means all of the standard provisions of a Federal coal lease, including provisions relating to lease duration, fees, rentals, royalties, lease bond, production and recordkeeping requirements, and lessee rights of assignment, extension, renewal, termination and expiration, and site-specific requirements included in Federal coal leases in addition to other terms and conditions which relate to protection of the environment and of human, natural and mineral resources.

Leased Federal coal means coal leased by the United States pursuant to 43 CFR Part 3400, except mineral interests in coal on Indian lands.

Mineral Leasing Act or *MLA* means the Mineral Leasing Act of 1920, as amended, 30 U.S.C. 181, *et seq.*

Mining plan means the plan for mining leased Federal coal required by the Mineral Leasing Act.

Permit application package means a proposal to conduct surface coal mining and reclamation operations on Federal lands, including an application for a permit, permit revision or permit renewal, all the information required by the Act, this subchapter, the applicable State program, any applicable cooperative agreement and all other applicable laws and regulations including, with respect to leased Federal coal, the Mineral Leasing Act and its implementing regulations.

Regulatory authority means the State regulatory authority pursuant to a cooperative agreement approved under Part 745 of this chapter or, in the absence of a cooperative agreement, OSM.

TVA-owned lands means land owned by the United States and entrusted to or managed by the Tennessee Valley Authority.

(b) The following terms shall have meanings as set forth in 43 CFR Parts 3480-3487: Exploration; exploration plan; maximum economic recovery; method of operation; mine; and resource recovery and protection plan.

[48 FR 6935, Feb. 16, 1983, as amended at 48 FR 44779, Sept. 30, 1983]

§ 740.10 Information collection.

The information collection requirements contained in this part have been approved by OSM of Management and Budget under 44 U.S.C. 3507 and assigned clearance numbers 1029-0026 and 1029-0027. The information is being collected to determine compliance with sections 506, 507, 509, 510, 515 and 523 of the Act (30 U.S.C. 1256, 1257, 1259, 1260, 1265 and 1273) and this part. The obligation to respond to the information collection requirements of this part is mandatory.

§ 740.11 Applicability.

(a) Upon approval or promulgation of a regulatory program for a State, that program and this subchapter shall apply to:

(1) Coal exploration operations on Federal lands not subject to 43 CFR Parts 3480-3487,

(2) Surface coal mining and reclamation operations on lands containing leased Federal coal, and

(3) Surface coal mining and reclamation operations on lands where either the coal to be mined or the surface is owned by the United States.

(b) Where OSM is the regulatory authority, references in the State program to the State or an agency or official of the State (with respect to functions of the State acting as regulatory authority) shall be construed as referring to OSM.

(c) Where the Secretary and a State have entered into a cooperative agreement, the cooperative agreement shall delineate the responsibilities of the Secretary and the State with respect to the administration of the regulatory program and this subchapter.

(d) Nothing in this subchapter shall affect in any way the authority of the Secretary or any Federal land management agency to include in any lease, license, permit, contract, or other instrument such conditions as may be appropriate to regulate surface coal mining and reclamation operations under provisions of law other than the Act on land under their jurisdiction.

(e) This subchapter shall not apply to surface coal mining and reclamation operations within a State prior to approval or promulgation of a regulatory program for the State.

(f) Where coal exploration or surface coal mining and reclamation operations within a State are on Federal lands and where no State or Federal program has been approved for the State, this subchapter shall apply in that State upon the effective date of these regulations.

[48 FR 6935, Feb. 16, 1983; 48 FR 13985, Apr. 1, 1983, as amended at 48 FR 44779, Sept. 30, 1983]

§ 740.13 Permits.

(a) *General requirements.* (1) No person shall conduct surface coal mining and reclamation operations on lands subject to this part unless that person has first obtained a permit issued pursuant to the regulatory program and this part.

(2) Every person conducting surface coal mining and reclamation operations on lands subject to this part shall comply with the terms and conditions of the permit and the lease or license, the Act, this subchapter, the regulatory program and all other applicable State and Federal laws and regulations.

(3) Surface coal mining and reclamation operations authorized under the initial regulatory program or 43 CFR Parts 3480-3487, as applicable, may be conducted beyond the eight-month period prescribed in the applicable regulatory program if all of the following conditions are present:

(i) A timely and administratively complete application for a permit to conduct those operations under this part has been made to the regulatory authority in accordance with the provisions of this part and the applicable regulatory program;

(ii) The regulatory authority has not yet rendered a final decision with respect to the permit application; and

(iii) Those operations are conducted in compliance with all terms and conditions of the initial regulatory program approval or permit, the requirements of the Act. 30 CFR Chapter VII, Subchapter B or 43 CFR Parts 3480-3487, as applicable, applicable State laws and regulations, and the requirements of the applicable lease or license.

(b) *Permit application package.* (1) Each application for a permit, or permit revision or renewal thereof to conduct surface coal mining and reclamation operations on lands subject to this part shall be accompanied by a fee made payable to the regulatory authority. The amount of the fee shall be determined in accordance with the permit fee criteria of the applicable regulatory program.

(2) Unless specified otherwise by the regulatory authority, seven copies of the complete permit application package shall be filed with the regulatory authority.

(3) Each permit application package shall include:

(i) The information required for a permit application or for an application for revision or renewal of a permit under the applicable regulatory program;

(ii) The resource recovery and protection plan required by 43 CFR Parts 3480-3487 for operations on lands containing leased Federal coal; and

(iii) Where OSM is the regulatory authority or where the proposed operations are on lands containing leased Federal coal, the following supplemental information to ensure compliance with Federal laws and regulations other than the Act:

(A) A description of the affected area of the proposed surface coal mining and reclamation operation with respect to: (*1*) Increases in employment, population and revenues to public and private entities, and (*2*) the ability of public and private entities to provide goods and services necessary to support surface coal mining and reclamation operations.

(B) An evaluation of impacts to the scenic and aesthetic resources, including noise on the surrounding area, due to the proposed surface coal mining and reclamation operation.

(C) A statement, including maps and ownership data as appropriate, of any cultural or historical sits listed on the National Register of Historic Places within the affected area of the proposed surface coal mining and reclamation operation.

(D) A statement of the classes of properties of potential significance within the disturbed area, and a plan for the identification and treatment, in accordance with 36 CFR Part 800, of properties significant and listed or eligible for listing on the National Register of Historic Places within the disturbed area of the proposed surface coal mining and reclamation operation.

(E) A description of the probable changes in air quality resulting from the mining operation and any necessary measures to comply with prevention of significant deterioration limitations, State Implementation Plans, or other Federal or State laws for air quality protection.

(F) A description of the location, acreage and condition of important habitats of selected indicator species located within the affected area of the proposed surface coal mining and reclamation operation.

(G) A description of active and inactive nests and prey areas of any Bald or Golden eagles located within the affected area of the proposed surface coal mining and reclamation operations.

(H) A description of all threatened and endangered species and their critical habitats located within the affected area of the proposed surface coal mining and reclamation operations.

(4) Where the surface of the Federal lands is subject to a lease or permit issued by the Federal government to a person other than the applicant, the permit application package shall contain information sufficient to demonstrate compliance with the requirements of § 740.15(c)(1). This requirement shall not apply to TVA-owned lands.

(c) *Permit review and processing.* Applications for permits, permit revisions or renewals thereof to conduct surface coal mining and reclamation operations on lands subject to this part shall be reviewed and processed in accordance with the requirements of the applicable regulatory program, subject to the following additional requirements:

(1) *Permit terms and conditions.* Permits shall include, as applicable, terms and conditions required by the lease issued pursuant to the Mineral Leasing Act and by other applicable Federal laws and regulations.

(2) *Criteria for permit approval or denial.* The regulatory authority shall not approve an application for a permit, or permit revision or renewal thereof for surface coal mining and reclamation operations on lands subject to this part unless the application is in accordance with the requirements of the applicable regulatory program and this Part or a cooperative agreement, as applicable.

(3) *Public participation in permit review process.* Where public hearings were held and determinations made under section 2(a)(3) (A), (B) and (C) of the Mineral Leasing Act (30 U.S.C. 201(a)(3) (A), (B) and (C)), such hearings may be made a part of the record of each public hearing on a permit application held pursuant to the requirements of the applicable regulatory program and this part. Matters covered at such hearings and determinations made at such hearings need not be readdressed.

(4) *Permit review processing for operations on lands administered by a Federal land management agency.* Upon receipt of a permit application package or a proposed revision or renewal of an approved permit that involves surface coal mining and reclamation operations on lands administered by an agency of the Federal Government, the regulatory authority shall transmit a copy of the complete permit application package, or pro-

posed revision or renewal thereof, to the Federal land management agency, with a request for review and comment.

(5) *Consultation with other Federal agencies.* Prior to approving or disapproving a permit, permit revision or renewal thereof, the regulatory authority shall consider the comments of the Federal land management agency and include these comments in the record of permit decisions.

(6) *Permit processing schedule.* The regulatory authority shall process the permit application package within the time schedule established by the applicable regulatory program, except that the schedule may be extended if necessary to ensure compliance with Federal laws and regulations other than the Act.

(7) *Determination of operator compliance with the Act.* Where OSM is the regulatory authority, it shall afford the applicant or operator an opportunity for an adjudicatory hearing as provided in 43 CFR Part 4 prior to a final determination on whether the applicant, or the operator specified in the application, controls or has controlled mining operations with a demonstrated pattern of willful violations of the Act of such nature and duration and with such resulting irreparable damage to the environment as to indicate an intent not to comply with the provisions of the Act.

(8) *Administrative review of decisions on permit applications.* Where OSM is the regulatory authority, the final decision on a permit application is subject to an appeal to the Department's Office of Hearings and Appeals as provided in Part 775 of this chapter. Where the State is the regulatory authority under a cooperative agreement, the final decision on a permit application is subject to administrative review as provided under the approved State program.

(9) *Bonds and insurance required for issuance of permits.* After the approval of an application for a new or revised permit or for renewal of an existing permit, but prior to issuance of such permit, the applicant/permittee shall file with the regulatory authority: (i) A performance bond which meets the requirements of the applicable regulatory program; (ii) proof of liability insurance in accordance with the applicable regulatory program; and (iii) where required, evidence of the execution of a Federal lessee protection bond. Bonds required to be filed with OSM shall be in a form required by OSM and made payable to the United States.

(d) *Review of permit revisions.* (1) Where the State is the regulatory authority for surface coal mining and reclamation operations on lands subject to this subchapter, it shall inform OSM of each request for a permit revision with respect to operations on lands containing leased Federal coal.

(2) OSM shall review each permit revision in consultation with the Bureau of Land Management and the appropriate Federal land management agency to determine whether the permit revision constitutes a mining plan modification requiring the Secretary's approval under § 746.18 of this chapter.

(3) The regulatory authority shall consult with the Federal land management agency to determine whether any permit revision will adversely affect Federal resources other than coal and whether the revision is consistent with that agency's land use plans for other Federal laws, regulations and executive orders for which it is responsible.

(e) *Transfer, assignment or sale of rights.* (1) The regulatory authority, before approving or disapproving an application for transfer, assignment or sale of rights granted under a permit issued pursuant to this subchapter, shall consult with the appropriate Federal land management agency and the Bureau of Land Management, as applicable.

(2) Approval of a transfer, assignment or sale of rights granted under a permit issued pursuant to this subchapter shall not be construed to constitute a transfer or assignment of leasehold interests. Leasehold interests may be transferred or assigned only in accordance with 43 CFR Part 3453.

(f) *Suspension or revocation of permits.* (1) A permit to conduct surface coal mining and reclamation operations on Federal lands may be suspended or revoked by the regulatory authority in accordance with Part 843 of this chapter and the applicable regulatory program.

(2) If a permit to conduct surface coal mining and reclamation operations on lands containing leased Federal coal is suspended or revoked, the regulatory authority shall notify the Bureau of Land Management so that the Bureau of Land Management can determine whether action should be taken to cancel the Federal lease. This section does not release the Federal lessee from the diligent development or continued operation requirements of 43 CFR Parts 3480-3487.

[48 FR 6935, Feb. 16, 1983, as amended at 48 FR 44779, Sept. 30, 1983]

§ 740.15 Bonds on Federal lands.

(a) *Federal lease bonds.* (1) Each holder of a Federal coal lease that is covered by a Federal lease bond required under 43 CFR Part 3474 may apply to the authorized officer for release of liability for that portion of the Federal lease bond that covers reclamation requirements.

(2) The authorized officer may release the liability for that portion of the Federal lease bond that covers reclamation requirements if:

(i) The lessee has secured a suitable performance bond covering the permit area under this part;

(ii) There are no pending actions or unresolved claims against existing bonds; and

(iii) The authorized officer has received concurrence from OSM and the Bureau of Land Management.

(b) *Performance bonds.* Where the State is the regulatory authority under a cooperative agreement, the performance bonds required for operations on Federal lands shall be made payable to the United States and the State. Where OSM is the regulatory authority, such bonds shall be payable only to the United States.

(c) *Federal lessee protection bonds.* (1) Where leased Federal coal is to be mined and the surface of the land is subject to a lease or permit issued by the United States for purposes other than surface coal mining, the applicant for a mining permit, if unable to obtain the written consent of the permittee or lessee of the surface to enter and commence surface coal mining operations, shall submit to the regulatory authority with his application evidence of execution of a bond or undertaking which meets the requirements of this section. The Federal lessee protection bond is in addition to the performance bond required by a regulatory program. This section does not apply to permits or licenses for the use of the surface that do not convey to the permittee or licensee the right of transfer, sale or consent to other uses.

(2) The bond shall be payable to the United States and, as applicable, the State for the use and benefit of the permittee or lessee of the surface lands involved.

(3) The bond shall secure payment to the surface estate for any damage which the surface coal mining and reclamation operation causes to the crops or tangible improvements of the permittee or lessee of the surface lands.

(4) The amount of the bond shall be determined either by the applicant and the Federal lessee or permittee or as determined in an action brought against the person conducting surface coal mining and reclamation operations or upon the bond in a court of competent jurisdiction.

(d) *Release of bonds.* (1) A Federal lease bond may be released upon satisfactory compliance with all applicable requirements of 43 CFR Parts 3480-3487 and 43 CFR Part 3400 and after the release is concurred in by the Bureau of Land Management.

(2) A Federal lessee protection bond shall be released upon the written consent of the permittee or lessee.

(3) Where surface coal mining and reclamation operations are subject to an approved mining plan, a performance bond shall be released by the State after the release is concurred in by OSM.

[48 FR 6935, Feb. 16, 1983; 48 FR 13985, Apr. 1, 1983, as amended at 48 FR 44779, Sept. 30, 1983]

§ 740.17 Inspection, enforcement and civil penalties.

(a) *General requirements.* (1) Where OSM is the regulatory authority, Parts 840, 842, 843 and 845 of this chapter shall govern its inspection, enforcement and civil penalty activities with respect to surface coal mining and reclamation operations on Federal lands.

(2) Where the State is the regulatory authority under a cooperative agreement, the State program shall govern inspection, enforcement and civil penalty activities by the regulatory authority with respect to surface coal mining and reclamation operations on Federal lands, while the requirements of Part 842, 843 and 845 of this chapter shall govern OSM inspection, enforcement and civil penalty activities conducted in oversight of the State program.

(3) The requirements of this section shall not apply to coal exploration on Federal lands subject to the requirements of 43 CFR Parts 3480-3487.

(b) *Right of entry.* (1) Persons engaging in coal exploration or surface coal mining and reclamation operations on Federal lands shall provide access for any authorized officer of OSM, the regulatory authority, and, as applicable, the Bureau of Land Management or the appropriate Federal land management agency to inspect the operations, without advance notice or a search warrant and upon presentation of appropriate credentials, to determine whether the operations are in compliance with all applicable laws, regulations, notices and orders, and terms and conditions of the permit.

(2) Any authorized representative of the regulatory authority and, as applicable, the Bureau of Land Management may, at reasonable times and without delay, have access to and copy any records and inspect any monitoring equipment or method of operation required under the Act, this subchapter and the permit, lease, license or mining plan in accordance with paragraph (a) of this section.

(3) No search warrant shall be required with respect to any activity under paragraph (a) or (b) of this section, except entry into a building without consent of the person in control of the building.

(c) *Inspections.* Inspections shall, to the extent practical, be conducted jointly if more than one government agency is involved. The regulatory authority shall coordinate inspections by Federal agencies and may request the participation of representatives from other Federal agencies when necessary to ensure compliance with this subchapter and other applicable Federal laws, regulations and orders.

[48 FR 6935, Feb. 16, 1983, as amended at 48 FR 44779, Sept. 30, 1983]

§ 740.19 Performance standards.

(a) *Operations and reclamation.* (1) Surface coal mining and reclamation operations on lands subject to this Part shall be conducted in accordance with the performance standards of the applicable regulatory program.

(2) Surface coal mining and reclamation operations on lands containing leased Federal coal shall be conducted in accordance with the requirements of the terms, conditions and stipulations of the lease issued under the Mineral Leasing Act and its implementing regulations in 43 CFR Parts 3480-3487, as applicable, and the mining plan.

(b) *Completion of operations and abandonment.* (1) Upon completion of operations, bonds shall be released in accordance with § 740.15(d) of this chapter.

(2) Where there is a Federal lease bond:

(i) Not less than 30 days prior to permanent cessation or abandonment of surface coal mining and reclamation operations, the person conducting those operations shall submit to OSM, in duplicate, a notice of intention to cease or abandon those operations, with a statement of the number of acres affected by the operations, the extent and kind of reclamation accomplished and the structures and other facilities that are to be removed from or remain on the permit area.

(ii) Upon receipt of this notice, the Bureau of Land Management and the appropriate Federal land management agency shall promptly make joint inspections to determine whether all operations have been completed in accordance with the requirements of 43 CFR Parts 3480-3487, the lease or licenses and the mining plan. Where all of these requirements have been complied with, the liability under the lease bond of the person conducting surface coal mining and reclamation operations shall be terminated.

(3) Where OSM is the regulatory authority, public hearings held with respect to final abandonment and releases of the performance bonds shall be in accordance with 5 U.S.C. 554 and 43 CFR Part 4.

[48 FR 6935, Feb. 16, 1983, as amended at 48 FR 44779, Sept. 30, 1983]

PART 745—STATE-FEDERAL COOPERATIVE AGREEMENTS

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AUTHORITY: 30 U.S.C. 1201 *et seq.* and 30 U.S.C. 181 *et seq.*

SOURCE: 48 FR 6939, Feb. 16, 1983, unless otherwise noted.

§ 745.1 Scope.

This part sets forth requirements for the development, approval and administration of cooperative agreements under section 523(c) of the Act.

§ 745.10 Information collection.

The information collection requirements contained in this part have been approved by OSM of Management and Budget under 44 U.S.C. 3507 and assigned clearance number 1029-0028. The information is being collected pursuant to section 523(c) of the Act (30 U.S.C. 1273(c)) and will be used to support a State's request for a State-Federal cooperative agreement or an amendment, termination or reinstatement thereto. The obligation to respond to the information collection requirements of this part is mandatory.

§ 745.11 Application and agreement.

(a) The Governor of any State may request that the Secretary enter into a cooperative agreement with the State, provided the State has an approved State regulatory program or has submitted a regulatory program for approval under Part 731 of this chapter, and has or may have within the State surface coal mining and reclamation operations on Federal lands.

(b) A request for a cooperative agreement shall be submitted in writing and, except to the extent previously submitted in the State program, shall include the following information:

(1) Information sufficient for OSM to make findings in accordance with paragraph (f) of this section;

(2) A proposed agreement consistent with the requirements of this part; and

(3) A certification by the Attorney General or the chief legal officer of the State regulatory authority that no State statutory, regulatory or legal constraint exists which would preclude the State regulatory authority from fully carrying out the proposed cooperative agreement.

(c) OSM shall publish a notice of the request and the full text of the terms of the proposed cooperative agreement as submitted or as subsequently modified by OSM and the State in the FEDERAL REGISTER as a proposed rule. A notice of the request and a summary of the terms of the proposed agreement shall also be published in a newspaper(s) of general circulation throughout the State. Both notices shall include:

(1) The location at which a copy of the request submitted by the State may be obtained; and

(2) A date, not less than 30 days after publication of the notices, before which members of the public may submit written comments on the request and the person to whom comments should be addressed.

(d) A public hearing shall be held within the comment period in a suitable location in the State requesting the cooperative agreement. This hearing may be combined with public hearings required under Part 732 of this chapter for the Secretary's consideration of approval of a State program submission, if appropriate. The date, time and place of the public hearing(s) on the request will be published in the FEDERAL REGISTER not less than 15 days prior to the date of the hearing.

(e) Before the expiration of the comment period, OSM shall consult with the Bureau of Land Management, Fish and Wildlife Service, and Federal land management agencies, as appropriate, with respect to the proposed cooperative agreement.

(f) OSM shall recommend to the Secretary that a cooperative agreement be entered into with a State, if OSM finds that:

(1) The State has an approved State regulatory program;

(2) The State regulatory authority has sufficient budget, equipment and personnel to enforce fully its regulatory program on lands subject to this part in the State; and

(3) The State has the legal authority to enter into the cooperative agreement.

(g) The Secretary shall publish in the FEDERAL REGISTER his or her decision with respect to a request by a State to enter into a cooperative agreement and the reasons therefor and the full text of the cooperative agreement.

§ 745.12 Terms.

Each cooperative agreement shall include:

(a) Terms obligating the State regulatory authority to inspect all surface coal mining and reclamation operations on Federal lands in accordance with the State regulatory program and to enforce the State program on Federal lands;

(b) A description of the powers and authority reserved by the Secretary, including, but not limited to, those specified under § 745.13;

(c) Provisions for the administration and enforcement by OSM and the State of this subchapter so as to minimize overlap and duplication;

(d) Provisions for regular reports by the State regulatory authority to OSM on the results of the State's implementation and administration of the cooperative agreement.

(e) Terms requiring the State regulatory authority to maintain sufficient personnel and facilities to comply with the terms of the cooperative agreement, and to notify OSM of any substantial change in State statutes, regulations, funding, staff, or other changes which would affect the State's ability to carry out the terms of the cooperative agreement;

(f) Terms for coordination among the State regulatory authority, the Federal land management agency, the Bureau of Land Management and OSM;

(g) Terms obligating the State regulatory authority to—

(1) Make available to OSM information on any action taken regarding any permit application for surface coal mining and reclamation operations on Federal lands; and

(2) Where lands containing leased Federal coal are involved, provide OSM, in the form specified by OSM in consultation with the State, with written findings indicating that each permit application is in compliance with the terms of the regulatory program and a technical analysis of each permit application to assist OSM in meeting its responsibilities under other applicable Federal laws and regulations.

§ 745.13 Authority reserved by the Secretary.

The Secretary shall not delegate to any State, nor shall any cooperative agreement under this part be construed to delegate to any State, authority to—

(a) Designate Federal lands as unsuitable for surface coal mining under Subchapter F of this chapter or terminate such designations;

(b) Comply with the National Environmental Policy Act of 1969, as amended, 42 U.S.C. 4321 *et seq.*, and Federal laws and regulations other than SMCRA;

(c) Develop land use management plans for Federal lands where the surface estate is federally-owned;

(d) Regulate non-coal mining activities on Federal lands;

(e) Determine when, where, and how to lease Federal coal and how much to lease;

(f) Develop terms for Federal coal leases, including any special terms relating to mining and reclamation procedures;

(g) Evaluate Federal coal resources;

(h) Establish royalties, rents, and bonuses charged in connection with Federal coal leases;

(i) Approve mining plans or modifications thereto;

(j) Enforce Federal lease terms, including diligent development and maximum economic recovery requirements;

(k) Approve or determine postmining land uses for Federal lands where the surface estate is federally-owned;

(l) Release Federal lease bonds;

(m) Evaluate the State's administration and enforcement of the approved State program and implementation of the cooperative agreement on Federal lands;

(n) Comply with the inspection, enforcement and civil penalties requirements of Parts 842 and 843 of this chapter except as provided under § 740.4(c)(5) of this chapter;

(o) Determine valid existing rights for surface coal mining and reclamation operations on Federal lands within the boundaries of any areas specified under section 522(e) (1) or (2) of the Act; or

(p) Determine that there are no significant recreational, timber, economic, or other values which may be incompatible with surface coal mining and reclamation operations on any Federal lands within the boundaries of any national forest under section 522(e)(2) of the Act.

§ 745.14 Amendments.

A cooperative agreement which has been approved pursuant to § 745.11 may be amended by mutual agreement of the Secretary and the Governor of a State. Amendments shall be adopted by Federal rulemaking, in accordance with § 745.11.

§ 745.15 Termination.

(a) A cooperative agreement may be terminated by the State upon written notice to the Secretary, specifying the date upon which the cooperative agreement shall be terminated. The date of termination shall not be less than 90 days from the date of the notice.

(b) A cooperative agreement may be terminated by the Secretary after giving notice to the State regulatory authority and affording the State regulatory authority and the public an opportunity for a public hearing and comment period, in accordance with the cooperative agreement, if the Secretary finds that:

(1) The State regulatory authority has substantially failed to comply with the requirements of this subchapter, the State program, or the cooperative agreement, or

(2) The State regulatory authority has failed to comply with any undertaking by the State in the cooperative agreement upon which approval of the State program, cooperative agreement, or grant by OSM for administration or enforcement of the State program or cooperative agreement was based.

(c) A cooperative agreement shall terminate—

(1) When no longer authorized by Federal law or the applicable State laws and regulations; or

(2) Upon termination or withdrawal of the Secretary's approval of the applicable State program.

§ 745.16 Reinstatement.

(a) A State may apply for reinstatement of the cooperative agreement by providing written evidence to OSM that the State has remedied all defects for which the agreement was terminated and is fully capable of carrying out the cooperative agreement. Any reinstatement shall be by Federal rulemaking in accordance with § 745.11.

(b) OSM may recommend approval of the reinstatement to the Secretary if it finds that the State meets all the requirements for the initial approval of a cooperative agreement under this subchapter.

(c) The Secretary may approve reinstatement of a cooperative agreement if the Secretary concurs in findings of OSM which recommended that approval.

PART 746—REVIEW AND APPROVAL OF MINING PLANS

Sec.
746.1 Scope.
746.10 Information collection.
746.11 General requirements.

Sec.
746.13 Decision document and recommendation on mining plan.
746.14 Approval, disapproval or conditional approval, of mining plan.
746.17 Term of approval.
746.18 Mining plan modification.

AUTHORITY: 30 U.S.C. 1201 *et seq.* and 30 U.S.C. 181 *et seq.*

SOURCE: 48 FR 6941, Feb. 16, 1983, unless otherwise noted.

§ 746.1 Scope.

This part provides the process and requirements for the review and approval, disapproval or conditional approval of mining plans on lands containing leased Federal coal.

§ 746.10 Information collection.

The information collection requirements contained in this section have been approved by OSM of Management and Budget under 44 U.S.C. 3507 and assigned clearance number 1029-0026. The information is being collected to determine compliance with section 523 of the Act (30 U.S.C. 1273) and this part. The obligation to respond to the information collection requirements of this part is mandatory.

§ 746.11 General requirements.

(a) No person shall conduct surface coal mining and reclamation operations on lands containing leased Federal coal until the Secretary has approved the mining plan.

(b) Surface coal mining and reclamation operations on lands containing leased Federal coal shall be conducted in accordance with a permit issued in accordance with this subchapter, any lease terms and conditions, and the approved mining plan.

§ 746.13 Decision document and recommendation on mining plan.

OSM shall prepare and submit to the Secretary a decision document recommending approval, disapproval or conditional approval of the mining plan to the Secretary. The recommendation shall be based, at a minimum, upon:

(a) The permit application package, including the resource recovery and protection plan;

(b) Information prepared in compliance with the National Environmental Policy Act of 1969, 42 U.S.C. 4321, *et seq.;*

(c) Documentation assuring compliance with the applicable requirements of other Federal laws, regulations and executive orders other than the Act;

(d) Comments and recommendations or concurrence of other Federal agencies, as applicable, and the public;

(e) The findings and recommendations of the Bureau of Land Management with respect to the resource recovery and protection plan and other requirements of the lease and the Mineral Leasing Act;

(f) The findings and recommendations of the regulatory authority with respect to the permit application and the State program; and

(g) The findings and recommendations of OSM with respect to the additional requirements of this subchapter.

§ 746.14 Approval, disapproval or conditional approval, of mining plan.

The Secretary shall approve, disapprove or conditionally approve the mining plan in accordance with this part.

§ 746.17 Term of approval.

(a) Each mining plan approval shall cover the operations for which a complete permit application package was submitted, unless otherwise indicated in the approval.

(b) An approved mining plan shall remain in effect until modified, cancelled or withdrawn and shall be binding on any person conducting mining under the approved mining plan.

§ 746.18 Mining plan modification.

(a) Mining plan modifications shall be approved by the Secretary.

(b) The approval of mining plan modifications shall be in accordance with the procedures of this part for mining plan approval.

(c) Surface coal mining and reclamation operations on lands containing leased Federal coal pursuant to a permit revision issued by the regulatory authority shall not commence until—

(1) OSM determines that the permit revision does not constitute a mining

plan modification under this section, or

(2) If the permit revision constitutes a mining plan modification under this section, such modification has been approved by the Secretary.

(d) Permit revisions constitute mining plan modifications if they meet any of the following criteria:

(1) Any change in the mining plan which would affect the conditions of its approval pursuant to Federal law or regulation other than the Act;

(2) Any change which would adversely affect the level of protection afforded any land, facility or place designated unsuitable for mining;

(3) Any change in the location or amount of coal to be mined, except where such change is the result of:

(i) A minor change in the amount of coal actually available for mining from the amount estimated; or

(ii) An incidental boundary change;

(4) Any change which would extend coal mining and reclamation operations onto leased Federal coal lands for the first time;

(5) Any change which requires the preparation of an environmental impact statement under the National Environmental Policy Act or 1969, 42 U.S.C. 4321 *et seq.*;

(6) Any change in the mining operations and reclamation plan that would result in a change in the postmining land use where the surface is federally-owned.

SUBCHAPTER E—INDIAN LANDS PROGRAM

PART 750—REQUIREMENTS FOR SURFACE COAL MINING AND RECLAMATION OPERATIONS ON INDIAN LANDS

Sec.
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750.15 Coal exploration.
750.16 Performance standards.
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750.19 Certification of blasters.
750.20 Adoption of Indian coal lease terms.

AUTHORITY: 30 U.S.C. 1201-1328; 5 U.S.C. 301.

SOURCE: 49 FR 38477, Sept. 28, 1984, unless otherwise noted.

§ 750.1 Scope.

This subchapter provides for the regulation of surface coal mining and reclamation operations on Indian lands and constitutes the Federal program for Indian lands.

§ 750.5 Definitions.

For purposes of regulating surface coal mining operations on Indian lands, the following terms, when used in this subchapter or in parts referenced by this subchapter, have the following meanings:

BIA means the Bureau of Indian Affairs of the U.S. Department of the Interior.

BLM means the Bureau of Land Management of the U.S. Department of the Interior.

Federal program means the Federal program for Indian lands.

Indian mineral owner means (1) any individual Indian or Alaska native who owns land or mineral interests in land the title to which is held in trust by the United States or is subject to a restriction against alienation imposed by the United States, or (2) any Indian tribe, band, native, pueblo, community, rancheria, colony, or other group which owns land or mineral interest in land the title to which is held in trust by the United States or is subject to a restriction against alienation imposed by the United States. This definition does not include owners of lands patented to a village or regional corporation pursuant to the Alaska Native Claims Settlement Act, Pub. L. 92-203.

Local government agencies means, in addition to county, city or township governments, Indian tribal governments.

Minerals agreement means any joint venture, operating, production sharing, service, managerial, lease or other agreements, or any amendment, supplement to or modification of such agreement, providing for the exploration for, or extraction, processing, or the development of coal, or providing for the sale or other disposition of the production or products of such coal resources.

MMS means the Minerals Management Service of the U.S. Department of the Interior.

Regulatory authority means the Office of Surface Mining.

§ 750.6 Responsibilities.

(a) OSM shall: (1) Be the regulatory authority on Indian lands;

(2) After consultation with the Bureau of Indian Affairs and, as applicable, with the Bureau of Land Management, conditionally approve, approve, or disapprove applications for permits, permit renewals, or permit revisions for surface coal mining operations on Indian lands, and applications for the transfer, sale or assignment of such permit rights on Indian lands;

(3) Conduct inspection and enforcement activities with respect to surface coal mining and reclamation operations on Indian lands;

(4) Consult with the BIA and the affected tribe with respect to special requirements relating to the protection of non-coal resources of the area affected by surface coal mining and reclamation operations, and assure operator compliance with such special requirements;

(5) Consult with the Bureau of Land Management concerning requirements relating to the development, production and recovery of mineral resources on Indian lands;

(6) Approve environmental protection performance bonds and liability insurance required for surface coal mining and reclamation operations on Indian lands but not the production royalty bond; and

(7) Ensure compliance with the requirements of the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*, with respect to permitting actions for surface coal mining and reclamation operations on Indian lands.

(b) The Bureau of Land Management is responsible for: (1) Receiving, reviewing, and conditionally approving, approving or disapproving coal exploration plans and mining plans, as provided in 25 CFR Chapter I or in specific Indian mineral agreements;

(2) Administering, and conducting inspection and enforcement for, coal exploration operations on Indian lands;

(3) Administering mining contract, lease or mineral agreement terms and conditions, as provided for in 25 CFR Chapter I or in specific Indian mineral agreements; and

(4) Administering and conducting inspections and enforcement of terms and conditions of contracts, leases or mineral agreements for coal mining operations, including production verification and inspection of operations for that purpose.

(c) The Minerals Management Service is responsible for collecting and accounting for royalties and other income from Indian mineral agreements except for annual rentals.

(d) The Bureau of Indian Affairs is responsible for: (1) Consulting directly with and providing representation for Indian mineral owners and other Indian land owners in matters relating to surface coal mining and reclamation operations on Indian lands;

(2) After consultation with the affected tribe, reviewing and making recommendations to OSM concerning permit applications, renewals, revisions or transfers of permits, permit rights or performance bonds; and

(3) After consultation with the affected tribe, reviewing mining plans and making recommendations to the Bureau of Land Management pursuant to 25 CFR 216.7.

§ 750.10 Information collection.

The information collection requirements of this part do not require approval from the Office of Management and Budget under 44 U.S.C. 3507 because there are expected to be less than 10 respondents annually.

§ 750.11 Permits.

(a) No person shall conduct surface coal mining and reclamation operations on Indian lands after eight months following the effective date of this subchapter unless that person has first obtained a permit pursuant to this part.

(b) Any person conducting surface coal mining and reclamation operations on lands subject to this part shall comply with the terms and conditions of the permit, the requirements of this subchapter, and the Act.

(c) Surface coal mining and reclamation operations authorized prior to the effective date of this subchapter may be conducted beyond the eight-month period specified in paragraph (a) of this section if the following conditions are present: (1) An application for a permit to conduct those operations under this part has been made within two months of the implementation of the Federal program for Indian lands;

(2) OSM has not yet rendered an initial administrative decision approving or disapproving the permit application; and

(3) Those operations are conducted in compliance with all terms and conditions of the lease or minerals agreement, the existing authorization to mine, the requirements of the Act, and the requirements of 25 CFR Chapter I.

(d) Whenever surface coal mining and reclamation operations are proposed to include both Indian lands and non-Indian lands, OSM will use reasonable efforts to ensure that reviews of the permit applications will be conducted cooperatively and concurrently by OSM and the regulatory authority responsible for the non-Indian lands.

§ 750.12 Permit applications.

(a) Each application for a permit, permit revision, or permit renewal to conduct surface coal mining and reclamation operations on land subject to this part shall be accompanied by a fee made payable to the United States. The amount or method of calculation of the fees shall be determined by the Director.

(b) Unless specified otherwise by the regulatory authority, each person submitting a permit application shall file no less than seven copies of the complete permit application package with OSM. OSM will ensure that the affected tribes, the Bureau of Indian Affairs, and when applicable, the Bureau of Land Management receive copies of the application.

(c)(1) The following requirements of Subchapter G of this chapter shall govern the processing of permit applications on Indian lands except as specified in paragraph (c)(2) or (c)(3) of this section.

(i) Part 773;
(ii) Part 774;
(iii) Part 775;
(iv) Part 777;
(v) Part 778;
(vi) Part 779;
(vii) Part 780;
(viii) Part 783;
(ix) Part 784; and
(x) Part 785;

(2) The following provisions of Subchapter G are not applicable to permitting on Indian lands:

(i) Part 772;
(ii) Sections 773.11, 773.15(c)(3), 777.17;
(iii) Section 778.16 (a) and (b); and
(iv) Sections 785.11, 785.12;

(3) *Special requirements.* (i) Approval of a transfer, assignment, or sale of rights granted under a permit shall not be construed as approval of a transfer or assignment of a leasehold interest. Leasehold interests may be transferred or assigned only in accordance with 25 CFR Parts 211 and 212.

(ii) The following additional requirements are applicable to permit revisions:

(A) Applications for revisions pursuant to § 774.13(b) of this chapter shall contain the same information on the proposed revised operation as if the revised operation had been proposed as part of the initial operation permitted under this part.

(B) OSM shall determine if the application for revision is complete and if the proposed revision is significant. OSM shall consider the following factors as well as other relevant factors in determining the significance of a proposed revision: (*1*) Changes in production or recoverability of the coal resource; (*2*) the environmental effects; (*3*) the public interest in the operation, or likely interest in the proposed revision; and (*4*) possible adverse impacts from the proposed revision on fish or wildlife, endangered species, bald or golden eagles or cultural resources.

(C) Significant revisions shall be processed as if they are new applications in accordance with Parts 773 and 775 of this chapter. Other revisions shall be reviewed to determine if the findings which were made in issuing the original permit are still valid.

(iii) Any section in this chapter which provides for consultation with, or notification to, State and local governments shall be interpreted as requiring in like manner consultation with, or notification to, tribal governments.

(d) The permit application package shall also contain:

(1) The mining plan required to be submitted by 25 CFR 216.7 or 43 CFR Part 3480, as applicable.

(2) The following information to assure compliance with Federal laws other than the Act:

(i) The description of the proposed surface coal mining and reclamation operation with respect to: (A) Increases in employment, population, and revenues to public and private entities; and (B) the ability of public and private entities to provide goods and services necessary to support surface coal mining and reclamation operations.

(ii) An evaluation of impacts to the scenic and aesthetic resources, including noise on the surrounding area, due to the proposed surface coal mining and reclamation operation.

(iii) A statement, including maps and ownership data as appropriate, of any cultural or historical site listed on the National Register of Historic Places within the permit and adjacent areas of the proposed surface coal mining and reclamation operation.

(iv) A statement of the classes of properties of potential significance within the disturbed area, and a plan for the identification and treatment, in accordance with 36 CFR Part 800, of properties significant and listed, or eligible for listing, on the National Register of Historic Places within the permit area of the proposed surface coal mining and reclamation operation.

(v) A description of compliance with the American Indian Religious Freedom Act, and other Federal laws aimed at protecting cultural resources on Indian lands.

(vi) A description of the probable changes in air quality resulting from the surface coal mining operation and any necessary measures to comply with prevention of significant deterioration limitations, or other Federal laws for air quality protection.

(vii) A description of the location, acreage and condition of important habitats of selected indicator species located within the permit and adjacent areas of the proposed surface coal mining and reclamation operation.

(viii) A description of active and inactive nests and prey areas of any bald or golden eagles located within the permit and adjacent areas of the proposed surface coal mining and reclamation operations.

(ix) A description and special studies, if required, of all threatened and endangered species and their critical habitats located within the permit and adjacent areas of the proposed surface coal mining and reclamation operations.

§ 750.13 Small operator assistance.

Part 795 of this chapter is applicable on Indian lands.

§ 750.14 Lands designated unsuitable for mining by Act of Congress.

Part 761 of this chapter is applicable on Indian lands.

§ 750.15 Coal exploration.

Coal exploration operations on Indian lands shall be conducted in accordance with 25 CFR Part 216 and 43 CFR Part 3480, whichever is applicable.

§ 750.16 Performance standards.

After OSM issues a permit under this part, a person conducting surface coal mining operations on Indian lands shall do so in accordance with Parts 816, 817, 819, 822, 823, 824, 827, and 828 of this chapter. Prior to that time, the person conducting surface coal mining operations shall adhere to the performance standards of 25 CFR Part 216, Subpart B.

§ 750.17 Bonding.

Subchapter J of this title is applicable on Indian lands.

§ 750.18 Inspection and enforcement.

(a) Parts 842, 843 and 845 of this chapter and the hearings and appeals procedures of 43 CFR Part 4 are applicable on Indian lands.

(b) OSM shall furnish copies of notices and orders to mineral owners or surface owners on whose land the surface coal mining operation takes place. OSM may furnish copies of notices and orders to any other person having an interest in the surface coal mining and reclamation operation or the permit area.

(c) BLM shall furnish copies of notices and orders to mineral owners or surface owners on whose land coal exploration operations take place and pursuant to 25 CFR 216.7 and 43 CFR Part 3480, where applicable, to any mineral owner or surface owner, or to any person having an interest in the coal mining operation.

(d) Whenever an authorized representative of the Secretary decides to conduct an inspection of any coal mining operations or any premises in which any records to be maintained are located, the appropriate representative of the local governing Indian tribe shall be notified and be invited to accompany the Secretary's representative on such an inspection.

(e) No provision in this chapter shall be interpreted as replacing or superseding any other remedies of the Indian mineral owners, as set forth in a contract or otherwise available at law.

(f) Appropriate officials of the local governing Indian tribe shall be notified of any hearings or conferences conducted regarding civil penalties and shall be invited to attend.

§ 750.19 Certification of blasters.

A person seeking to conduct blasting operations on Indian lands shall comply with the requirements of §§ 816.61(c) and 817.61(c) and Part 955 of this chapter.

[51 FR 19461, May 29, 1986]

§ 750.20 Adoption of Indian coal lease terms.

(a) All leases of coal on Indian lands are amended to include the following:

> The Lessee shall comply with all applicable requirements of the Surface Mining Control and Reclamation Act of 1977, and all regulations promulgated thereunder, including those codified at 30 CFR Part 750.

(b) With respect to leases issued after August 3, 1977, the Secretary shall also include and enforce in such leases terms and conditions which are requested in writing by the Indian tribe whose interest is affected by such leases.

PART 755—TRIBAL-FEDERAL INTERGOVERNMENTAL AGREEMENTS

Sec.
755.1 Scope.
755.10 Information collection.
755.11 Application and agreement.
755.12 Terms.
755.13 Authority reserved by the Secretary.
755.14 Amendments.
755.15 Termination.

AUTHORITY: Pub. L. 95-87 30 U.S.C. 1201-1328.

SOURCE: 49 FR 38480, Sept. 28, 1984, unless otherwise noted.

§ 755.1 Scope.

This part sets forth requirements for the development, approval and administration of Tribal-Federal Intergovernmental Agreements.

§ 755.10 Information collection.

The information collection requirements contained in this part do not require approval from the Office of Management and Budget under 44 U.S.C. 3507 because there are expected to be less than 10 respondents annually.

§ 755.11 Application and agreement.

(a) An Indian tribe may request that the Secretary enter into a Tribal-Federal intergovernmental agreement with the tribe.

(b) A request for a Tribal-Federal intergovernmental agreement shall be submitted in writing and shall include proposed terms of the agreement consistent with the requirements of this part.

§ 755.12 Terms.

The terms in each Tribal-Federal intergovernmental agreement may include:

(a) Provisions to allow the tribe to work with and assist OSM in the review of permit applications, and to recommend appropriate action on permits, permit applications, inspection and enforcement, and bond release or forfeiture; and

(b) Provisions to provide funding for tribal employees to attend and testify at hearings and to perform other functions under the agreement.

§ 755.13 Authority reserved by the Secretary.

The Secretary shall not delegate to any Indian tribe, nor shall any Tribal-Federal Intergovernmental Agreement be construed to delegate to any tribe, the nondelegable authority exercised by or reserved to the Secretary on Indian lands.

§ 755.14 Amendments.

An agreement that has been approved pursuant to this part may be amended by mutual agreement of the Secretary and the officers of the tribe.

§ 755.15 Termination.

An agreement may be terminated by either party upon written notice to the other specifying the date upon which the agreement will be terminated. The date of termination shall be no less than 30 days from the date of the notice.

SUBCHAPTER F—AREAS UNSUITABLE FOR MINING

PART 761—AREAS DESIGNATED BY ACT OF CONGRESS

Sec.
761.1 Scope.
761.3 Authority.
761.5 Definitions.
761.11 Areas where mining is prohibited or limited.
761.12 Procedures.

AUTHORITY: Secs. 102, 201, 501(b), 503, 504, 510, 512, 513, 514, 522 and 701 of Pub. L. 95-87, 91 Stat. 448, 449, 468, 470, 471, 480, 483, 484, 485, 507 and 518 (30 U.S.C. 1202, 1211, 1251, 1253, 1254, 1260, 1262, 1263, 1264, 1272, and 1291).

SOURCE: 48 FR 41348, Sept. 14, 1983, unless otherwise noted.

§ 761.1 Scope.

This part establishes the procedures and standards to be followed in determining whether a proposed surface coal mining and reclamation operation can be authorized in light of the prohibitions and limitations in section 522(e) of the Act for those types of operations on certain Federal, public and private lands.

§ 761.3 Authority.

The State regulatory authority or the Secretary is authorized by section 522(e) of the Act (30 U.S.C. 1272(e)) to prohibit or limit surface coal mining operations on or near certain private, Federal, and other public lands, subject to valid existing rights and except for those operations which existed on August 3, 1977.

§ 761.5 Definitions.

For the purposes of this part—

Cemetery means any area of land where human bodies are interred, except for private family burial grounds.

Community or institutional building means any structure, other than a public building or an occupied dwelling, which is used primarily for meetings, gatherings or functions of local civic organizations or other community groups; functions as an educational, cultural, historic, religious, scientific, correctional, mental-health or physical health care facility; or is used for public services, including, but not limited to, water supply, power generation or sewage treatment.

Occupied dwelling means any building that is currently being used on a regular or temporary basis for human habitation.

Public building means any structure that is owned or leased, and principally used by a governmental agency for public business or meetings.

Public park means an area or portion of an area dedicated or designated by any Federal, State, or local agency primarily for public recreational use, whether or not such use is limited to certain times or days, including any land leased, reserved, or held open to the public because of that use.

Public road means a road (a) which has been designated as a public road pursuant to the laws of the jurisdiction in which it is located; (b) which is maintained with public funds in a manner similar to other public roads of the same classification within the jurisdiction; (c) for which there is substantial (more than incidental) public use; and (d) which meets road construction standards for other public roads of the same classification in the local jurisdiction.

Publicly-owned park means a public park that is owned by a Federal, State or local governmental entity.

Significant forest cover means an existing plant community consisting predominantly of trees and other woody vegetation. The Secretary of Agriculture shall decide on a case-by-case basis whether the forest cover is significant within those national forests west of the 100th meridian.

Significant recreational, timber, economic, or other values incompatible with surface coal mining operations means those values to be evaluated for their significance which could be damaged beyond an operator's ability to repair or restore by, and are not capable of existing together with, surface coal mining operations because of the undesirable effects mining would have on those values, either on the area included in the permit application or on other affected areas. Those values to be evaluated for their importance include:

(a) Recreation, including hiking, boating, camping, skiing or other related outdoor activities;

(b) Timber manager and silviculture;

(c) Agriculture, aquaculture or production of other natural, processed or manufactured products which enter commerce;

(d) Scenic, historic, archeologic, esthetic, fish, wildlife, plants or cultural interests.

Surface coal mining operations which exist on the date of enactment means all surface coal mining operations which were being conducted on August 3, 1977.

Surface operations and impacts incident to an underground coal mine means all activities involved in or related to underground coal mining which are either conducted on the surface of the land, produce changes in the land surface or disturb the surface, air or water resources of the area, including all activities listed in section 701(28) of the Act and the definition of surface coal mining operations appearing in § 700.5 of this chapter.

Valid existing rights means:

(a) Except for haul roads, that a person possesses valid existing rights for an area protected under section 522(e) of the Act on August 3, 1977, if the application of any of the prohibitions contained in that section to the property interest that existed on that date would effect a taking of the person's property which would entitle the person to just compensation under the Fifth and Fourteenth Amendments to the United States Constitution;

(b) For haul roads,

(1) A recorded right of way, recorded easement or a permit for a coal haul road recorded as of August 3, 1977, or

(2) Any other road in existence as of August 3, 1977;

(c) A person possesses valid existing rights if the person proposing to conduct surface coal mining operations can demonstrate that the coal is both needed for, and immediately adjacent to, an ongoing surface coal mining operation which existed on August 3, 1977. A determination that coal is "needed for" will be based upon a finding that the extension of mining is essential to make the surface coal mining operation as a whole economically viable;

(d) Where an area comes under the protection of section 522(e) of the Act after August 3, 1977, valid existing rights shall be found if—

(1) On the date the protection comes into existence, a validly authorized surface coal mining operation exists on that area; or

(2) The prohibition caused by section 522(e) of the Act, if applied to the property interest that exists on the date the protection comes into existence, would effect a taking of the person's property which would entitle the person to just compensation under the Fifth and Fourteenth Amendments to the United States Constitution.

(e) Interpretation of the terms of the document relied upon to establish the rights to which the standard of paragraphs (a) and (d) of this section applies shall be based either upon applicable State statutory or case law concerning interpretation of documents conveying mineral rights or, where no applicable State law exists, upon the usage and custom at the time and place it came into existence.

§ 761.11 Areas where mining is prohibited or limited.

Subject to valid existing rights, no surface coal mining operations shall be conducted after August, 3, 1977, unless those operations existed on the date of enactment:

(a) On any lands within the boundaries of the National Park System, the National Wildlife Refuge System, The National System of Trails, the National Wilderness Preservation System, the Wild and Scenic Rivers System including, for study rivers designated under section 5(a) of the Wild and Scenic Rivers Act (16 U.S.C. 1276(a)), a corridor extending not more than one-quarter mile from each bank for the length of the segment being studied, and National Recreation Areas designated by Act of Congress;

(b) On any Federal lands within the boundaries of any national forest; *Provided, however,* That surface coal mining operations may be permitted on such lands, if the Secretary finds that there are no significant recreational, timber, economic, or other values which may be incompatible with surface coal mining operations; and

(1) Surface operations and impacts are incident to an underground coal mine; or

(2) The Secretary of Agriculture determines, with respect to lands which do not have significant forest cover within those national forests west of the 100th meridian, that surface coal mining operations comply with the Multiple-Use Sustained Yield Act of 1960 (16 U.S.C. 528-531), the Federal Coal Leasing Amendments Act of 1975 (Pub. L. 94-377, 30 U.S.C. 201 *et seq.*), the National Forest Mangement Act of 1976 (90 Stat. 2949), and the provisions of the Act. No surface coal mining operation may be permitted within the boundaries of the Custer National Forest;

(c) On any lands where mining will adversely affect any publicly owned park or any publicly owned places included in the National Register of Historic Places, unless approved jointly by the regulatory authority and the Federal, State, or local agency with jurisdiction over the park or place;

(d) Within 100 feet, measured horizontally, of the outside right-of-way line of any public road, except—

(1) Where mine access roads or haulage roads join such right-of-way line; or

(2) Where the regulatory authority or the appropriate public road authority, pursuant to being designated as the responsible agency by the regulatory authority, allows the public road to be relocated, closed, or the area affected to be within 100 feet of such road, after—

(i) Public notice and opportunity for a public hearing in accordance with § 761.12(d); and

(ii) Making a written finding that the interests of the affected public and landowners will be protected;

(e) Within 300 feet, measured horizontally, of any occupied dwelling, except when—

(1) The owner thereof has provided a written waiver consenting to surface coal mining operations closer than 300 feet; or

(2) The part of the mining operation which is within 300 feet of the dwelling is a haul road or access road which connects with an existing public road on the side of the public road opposite the dwelling;

(f) Within 300 feet measured horizontally of any public building, school, church, community or institutional building or public park; or

(g) Within 100 feet measured horizontally of a cemetery;

(h) There will be no surface coal mining, permitting, licensing or exploration of Federal lands in the National Park System, National Wildlife Refuge System, National System of Trails, National Wilderness Preservation System, Wild and Scenic Rivers System, or National Recreation Areas, unless called for by Acts of Congress.

§ 761.12 Procedures.

(a) Upon receipt of a complete application for a surface coal mining and reclamation operation permit, the regulatory authority shall review the application to determine whether surface coal mining operations are limited or prohibited under § 761.11 on the lands which would be disturbed by the proposed operations.

(b)(1) Where the proposed operation would be located on any lands listed in § 761.11 (a), (f), or (g), the regulatory authority shall reject the application if the applicant has no valid existing rights for the area, or if the operation did not exist on August 3, 1977.

(2) If the regulatory authority is unable to determine whether the proposed operation is located within the boundaries of any of the lands in § 761.11(a) or closer than the limits provided in § 761.11 (f) and (g), the regulatory authority shall transmit a copy of the relevant portions of the permit application to the appropriate Federal, State, or local government agency for a determination or clarification of the relevant boundaries or distances, with a notice to the appropriate agency that it has 30 days from receipt of the request in which to respond. The National Park Service or the U.S. Fish and Wildlife Service

shall be notified of any request for a determination of valid existing rights pertaining to areas within the boundaries of areas under their jurisdiction and shall have 30 days from receipt of the notification in which to respond. The regulatory authority, upon request by the appropriate agency, shall grant an extension to the 30-day period of an additional 30 days. If no response is received within 30-day period or within the extended period granted, the regulatory authority may make the necessary determination based on the information it has available.

(c) Where the proposed operation would include Federal lands within the boundaries of any national forest, and the applicant seeks a determination that mining is permissible under § 761.11(b), the applicant shall submit a permit application to the Director for processing under Subchapter D of this chapter. Before acting on the permit application, the Director shall ensure that the Secretary's determination has been received and the findings required by section 522(e)(2) of the Act have been made.

(d) Where the mining operation is proposed to be conducted within 100 feet, measured horizontally, of the outside right-of-way line of any public road (except as provided in § 761.11(d)(2)) or where the applicant proposes to relocate or close any public road, the regulatory authority or public road authority designated by the regulatory authority shall—

(1) Require the applicant to obtain necessary approvals of the authority with jurisdiction over the public road;

(2) Provide an opportunity for a public hearing in the locality of the proposed mining operation for the purpose of determining whether the interests of the public and affected landowners will be protected;

(3) If a public hearing is requested, provide appropriate advance notice of the public hearing, to be published in a newspaper of general circulation in the affected locale at least 2 weeks prior to the hearing; and

(4) Make a written finding based upon information received at the public hearing within 30 days after completion of the hearing, or after any public comment period ends if no hearing is held, as to whether the interests of the public and affected landowners will be protected from the proposed mining operation. No mining shall be allowed within 100 feet of the outside right-of-way line of a road, nor may a road be relocated or closed, unless the regulatory authority or public road authority determines that the interests of the public and affected landowners will be protected.

(e)(1) Where the proposed surface coal mining operations would be conducted within 300 feet, measured horizontally, of any occupied dwelling, the permit applicant shall submit with the application a written waiver by lease, deed, or other conveyance from the owner of the dwelling, clarifying that the owner and signator had the legal right to deny mining and knowingly waived that right. The waiver shall act as consent to such operations within a closer distance of the dwelling as specified.

(2) Where the applicant for a permit after August 3, 1977, had obtained a valid waiver prior to August 3, 1977, from the owner of an occupied dwelling to mine within 300 feet of such dwelling, a new waiver shall not be required.

(3)(i) Where the applicant for a permit after August 3, 1977, had obtained a valid waiver from the owner of an occupied dwelling, that waiver shall remain effective against subsequent purchasers who had actual or constructive knowledge of the existing waiver at the time of purchase.

(ii) A subsequent purchaser shall be deemed to have constructive knowledge if the waiver has been properly filed in public property records pursuant to State laws or if the mining has proceeded to within the 300-foot limit prior to the date of purchase.

(f)(1) Where the regulatory authority determines that the proposed surface coal mining operation will adversely affect any publicly owned park or any publicly owned place included in the National Register of Historic Places, the regulatory authority shall transmit to the Federal, State, or local agency with jurisdiction over the publicly owned park or publicly owned National Register place a copy of applicable parts of the permit application, together with a request for that agency's approval or disapproval of the operation, and a notice to that agency that it has 30 days from receipt of the request within which to respond and that failure to interpose a timely objection will constitute approval. The regulatory authority, upon request by the appropriate agency, may grant an extension to the 30-day period of an additional 30 days. Failure to interpose an objection within 30 days or the extended period granted shall constitute an approval of the proposed permit.

(2) A permit for the operation shall not be issued unless jointly approved by all affected agencies.

(g) If the regulatory authority determines that the proposed surface coal mining operation is not prohibited under section 522(e) of the Act and this part, it may nevertheless, pursuant to appropriate petitions, designate such lands as unsuitable for all or certain types of surface coal mining operations pursuant to Part 762, 764 or 769 of this chapter.

(h) A determination by the regulatory authority that a person holds or does not hold valid existing rights or that surface coal mining operations did or did not exist on the date of enactment shall be subject to administrative and judicial review under §§ 775.11 and 775.13 of this chapter.

PART 762—CRITERIA FOR DESIGNATING AREAS AS UNSUITABLE FOR SURFACE COAL MINING OPERATIONS

Sec.

762.1 Scope.
762.4 Responsibility.
762.5 Definitions.
762.11 Criteria for designating lands as unsuitable.
762.12 Additional criteria.
762.13 Land exempt from designation as unsuitable for surface coal mining operations.
762.14 Exploration on land designated as unsuitable for surface coal mining operations.

AUTHORITY: Secs. 102, 201, 501(b), 503, 504, 512 and 522 of Pub. L. 95-87, 91 Stat. 448, 449, 468, 470, 471, 483, 507 (30 U.S.C. 1201, 1211, 1251, 1253, 1254, 1262 and 1272).

SOURCE: 48 FR 41350, Sept. 14, 1983, unless otherwise noted.

§ 762.1 Scope.

This part establishes the minimum criteria to be used in determining whether lands should be designated as unsuitable for all or certain types of surface coal mining operations.

§ 762.4 Responsibility.

The regulatory authority or OSM shall use the criteria in this part for the evaluation of each petition for the designation of areas as unsuitable for surface coal mining operations.

§ 762.5 Definitions.

For purposes of this part:

Fragile lands means geographic areas containing natural, ecologic, scientific, or esthetic resources that could be damaged beyond an operator's ability to repair or restore or be destroyed by surface coal mining operations. Examples of fragile lands include valuable habitats for fish or wildlife, critical habitats for endangered or threatened species of animals or plants, uncommon geologic formations, National Natural Landmark sites, areas where mining may result in flooding, environmental corridors containing a concentration of ecologic and esthetic features, areas of recreational value due to high environmental quality, and buffer zones adjacent to the boundaries of areas where surface coal mining operations are prohibited under section 522(e) of the Act and Part 761 of this chapter, if those areas have characteristics requiring additional areal protection or if the buffer zone itself contains fragile resources.

Historic lands means historic, cultural, and scientific areas that could be damaged beyond an operator's ability to repair or restore, or be destroyed by surface coal mining operations. Examples of historic lands include archeological and paleontological sites, sites listed on or eligible for listing on a State or National Register of Historic Places, National Historic Landmark sites, sites having religious or cultural significance to native Americans or religious groups, and sites for which historic designation is pending.

Natural hazard lands means geographic areas in which natural conditions exist which pose or, as a result of surface coal mining operations, may pose a threat to the health, safety or welfare of people, property or the environment, including areas subject to landslides, cave-ins, large or encroaching sand dunes, severe wind or soil erosion, frequent flooding, avalanches and areas of unstable geology.

Renewable resource lands means geographic areas which contribute significantly to the long-range productivity of water supply or of food or fiber products, such lands to include aquifers and aquifer recharge areas.

Substantial legal and financial commitments in a surface coal mining operation means significant investments that have been made on the basis of a long-term coal contract in power plants, railroads, coal-handling, preparation, extraction or storage facilities and other capital-intensive activities. An example woild be an existing mine, not actually producing coal, but in a substantial stage of development prior to production. Costs of acquiring the coal in place or the right to mine it without an existing mine, as described in the above example, alone are not sufficient to constitute substantial legal and financial commitments.

EDITORIAL NOTE: The phrase "beyond an operator's ability to repair or restore" in the definitions of "*Fragile lands*", and "*Historic lands*", was suspended at 50 FR 258, Jan. 3, 1985.

§ 762.11 Criteria for designating lands as unsuitable.

(a) Upon petition an area shall be designated as unsuitable for all or certain types of surface coal mining operations, if the regulatory authority determines that reclamation is not technologically and economically feasible under the Act, this chapter or an approved State program.

(b) Upon petition an area may be (but is not required to be) designated as unsuitable for certain types of surface coal mining operations, if the operations will—

(1) Be incompatible with existing State or local land use plans or programs;

(2) Affect fragile or historic lands in which the operations could result in significant damage to important historic, cultural, scientific, or esthetic values or natural systems;

(3) Affect renewable resource lands in which the operations could result in a substantial loss or reduction of long-range productivity of water supply or of food or fiber products; or

(4) Affect natural hazard lands in which the operations could substantially endanger life and property, such lands to include areas subject to frequent flooding and areas of unstable geology.

§ 762.12 Additional criteria.

(a) A State regulatory authority may establish additional or more stringent criteria for determining whether lands within the State should be designated as unsuitable for coal mining operations. Such criteria shall be approved pursuant to Subchapter C of this chapter.

(b) The Secretary may establish additional criteria for determining whether Federal lands should be designated as unsuitable for surface mining operations.

(c) Additional criteria will be determined to be more stringent on the basis of whether they provide for greater protection of the public health, safety and welfare or the environment, such that areas beyond those specified in the criteria of this part would be designated as unsuitable for surface coal mining operations.

§ 762.13 Land exempt from designation as unsuitable for surface coal mining operations.

The requirements of this part do not apply to—

(a) Lands on which surface coal mining operations were being conducted on the date of enactment of the Act;

(b) Lands covered by a permit issued under the Act; or

(c) Lands where substantial legal and financial commitments in surface coal mining operations were in existence prior to January 4, 1977.

§ 762.14 Exploration on land designated as unsuitable for surface coal mining operations.

Designation of any area as unsuitable for all or certain types of surface coal mining operations pursuant to section 522 of the Act and regulations of this subchapter does not prohibit coal exploration operations in the area, if conducted in accordance with the Act, this chapter, any approved State or Federal program, and other applicable requirements. Exploration operations on any lands designated unsuitable for surface coal mining operations must be approved by the regulatory authority under Part 772 of this chapter, to ensure that exploration does not interfere with any value for which the area has been designated unsuitable for surface coal mining.

PART 764—STATE PROCESSES FOR DESIGNATING AREAS UNSUITABLE FOR SURFACE COAL MINING OPERATIONS

Sec.
764.1 Scope.
764.10 Information collection.
764.11 General process requirements.
764.13 Petitions.
764.15 Initial processing, recordkeeping, and notification requirements.
764.17 Hearing requirements.
764.19 Decision.
764.21 Data base and inventory system requirements.
764.23 Public information.
764.25 Regulatory authority responsibility for implementation.

AUTHORITY: Secs. 102, 201, 503, 510 and 522 of Pub. L. 95-87, 91 Stat. 448, 449, 470, 480 and 507 (30 U.S.C. 1202, 1211, 1253, 1260 and 1272).

SOURCE: 48 FR 41351, Sept. 14, 1983, unless otherwise noted.

§ 764.1 Scope.

This part establishes minimum procedures and standards to be included in each approved State program for designating non-Federal and non-Indian lands in a State as unsuitable for all or certain types of surface coal mining operations and for terminating designations.

§ 764.10 Information collection.

The information collection requirements contained in §§ 764.21 and 764.25(b) have been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned clearance number 1029-0030. The information required in § 764.21 is necessary to allow the regulatory authority to develop a data base and inventory system to evaluate whether reclamation is feasible in areas covered by petitions. The information required in § 764.25(b) is necessary to allow the regulatory authority to determine, when a permit application is filed, whether it includes any areas designated as unsuitable for surface coal mining.

§ 764.11 General process requirements.

Each State shall establish a process enabling objective decisions to be made on which, if any, land areas of the State are unsuitable for all or certain types of surface coal mining operations. These decisions shall be based on competent, scientifically sound data and other relevant information. This process shall include the requirements listed in this part.

§ 764.13 Petitions.

(a) *Right to petition.* Any person having an interest which is or may be adversely affected has the right to petition the regulatory authority to have an area designated as unsuitable for surface coal mining operations, or to have an existing designation terminated. For the purpose of this Action, a person having an interest which is or may be adversely affected must demonstrate how he or she meets an "injury in fact" test by describing the injury to his or her specific affected interests and demonstrate how he or she is among the injured.

(b) *Designation.* The regulatory authority shall determine what information must be provided by the petitioner to have an area designated as unsuitable for surface coal mining operations.

(1) At a minimum, a complete petition for designation shall include—

(i) The petitioner's name, address, telephone number, and notarized signature;

(ii) Identification of the petitioned areas, including its location and size, and a U.S. Geological Survey topographic map outlining the perimeter of the petitioned area;

(iii) An identification of the petitioner's interest which is or may be adversely affected by surface coal mining operations, including a statement demonstrating how the petitioner satisfies the requirements of paragraph (a) of this section;

(iv) A description of how mining of the area has affected of may adversely affect people, land, air, water, or other resources, including the petitioner's interests; and

(v) Allegations of fact and supporting evidence, covering all lands in the petition area, which tend to establish that the area is unsuitable for all or certain types of surface coal mining operations, pursuant to specific criteria of sections 522(a) (2) and (3) of the Act, assuming that contemporary mining practices required under applicable regulatory programs would be followed if the area were to be mined. Each of the allegations of fact should be specific as to the mining operation, if known, and the portion(s) of the petitioned area and petitioner's interests to which the allegation applies and be supported by evidence that tends to establish the validity of the allegations for the mining operation or portion of the petitioned areas.

(2) The regulatory authority may request that the petitioner provide other supplementary information which is readily available.

(c) *Termination.* The regulatory authority shall determine what information must be provided by the petitioner to terminate designations of lands as unsuitable for surface coal mining operations.

(1) At a minimum, a complete petition for termination shall include—

(i) The petitioner's name, address, telephone number, and notarized signature;

(ii) Identification of the petitioned area, including its location and size and a U.S. Geological Survey topographic map outlining the perimeter of the petitioned area to which the termination petition applies;

(iii) An identification of the petitioner's interest which is or may be adversely affected by the designation that the area is unsuitable for surface coal mining operations including a statement demonstrating how the petitioner satisfies the requirements of paragraph (a) of this section;

(iv) Allegations of facts covering all lands for which the termination is proposed. Each of the allegations of fact shall be specific as to the mining operation, if any, and to portions of the petitioned area and petitioner's interests to which the allegation applies. The allegations shall be supported by evidence, not contained in the record of the designation proceeding, that tends to establish the validity of the allegations for the mining operation or portion of the petitioned area, assuming that contemporary mining practices required under applicable regulatory programs would be followed were the area to be mined. For areas previously and unsuccessfully proposed for termination, significant new allegations of facts and supporting evidence must be presented in the petition. Allegations and supporting evidence should also be specific to the basis for which the designation was made and tend to establish that the designation should be terminated on the following bases:

(A) Nature or abundance of the protected resource or condition or other basis of the designation if the designation was based on criteria found in §762.11(b) of this chapter;

(B) Reclamation now being technologically and economically feasible if the designation was based on the criteria found in § 762.11(a) of this chapter; or

(C) Resources or conditions not being affected by surface coal mining operations, or in the case of land use plans, not being incompatible with surface coal mining operations during and after mining, if the designation was based on the criteria found in §762.11(b) of this chapter;

(2) The State regulatory authority may request that the petitioner provide other supplementary information which is readily available.

§ 764.15 Initial processing, recordkeeping, and notification requirements.

(a)(1) Within 60 days of receipt of a petition, the regulatory authority shall notify the petitioner by certified mail whether or not the petition is complete under § 764.13 (b) or (c). Complete, for a designation or termination petition, means that the information required under § 764.13 (b) or (c) has been provided.

(2) The regulatory authority shall determine whether any identified coal resources exist in the area covered by the petition, without requiring any showing from the petitioner. If the regulatory authority finds there are not any identified coal resources in that area, it shall return the petition to the petitioner with a statement of the findings.

(3) The regulatory authority may suspend petitions related to lands where it finds there is no real or forseeable potential for surface coal mining operations to occur. Real and foreseeble potential means that the petitioned lands are likely to be subject to leasing or mining activity within 5 years. Where petitions are suspended, the regulatory authority, upon request of the petitioner but not more than once each year, will determine whether there is real and foreseeable potential for surface coal mining operations to occur. If it is determined that there is a real or foreseeable potential for surface coal mining operations to occur, processing of the petition shall proceed.

(4) If the regulatory authority determines that the petition is incomplete, frivolous, or that the petitioner does not meet the requirements of § 764.13(a), it shall return the petition to the petitioner with a written statement of the reasons for the determination and the categories of information needed to make the petition complete. A frivolous petition is one in which the allegations of harm lack serious merit.

(5) When considering a petition for an area which was previously and unsuccessfully proposed for designation, the regulatory authority shall determine if the new petition presents significant new allegations of facts with evidence which tends to establish the allegations. If the petition does not contain such material, the regulatory authority may choose not to consider the petition and may return the petition to the petitioner, with a statement of its findings and a reference to the record of the previous designation proceedings where the facts were considered.

(6) The regulatory authority shall notify the person who submits a petition of any application for a permit received which includes any area covered by the petition.

(7) The regulatory authority may determine not to process any petition received insofar as it pertains to lands for which an administratively complete permit application has been filed and the first newspaper notice has been published. Based on such a determination, the regulatory authority may issue a decision on a complete and accurate permit application and shall inform the petitioner why the regulatory authority cannot consider the part of the petition pertaining to the proposed permit area.

(8) When a permit application is filed for an area where a petition has been suspended pursuant to § 764.15(a)(3), the regulatory authority shall initiate petition review and not issue a permit until a decision is made on the petition.

(b)(1) Promptly after a petition is received, the regulatory authority shall notify the general public of the receipt of the petition by a newspaper advertisement placed in the locale of the area covered by the petition, in the newspaper providing broadest circulation in the region of the petitioned area and in any official State register of public notices. The regulatory authority shall make copies of the petition available to the public and shall provide copies of the petition to other interested governmental agencies, intervenors, persons with an ownership interest of record in the property, and other persons known to the regulatory authority to have an interest in the property. Proper notice to persons with an ownership interest of record in the property shall comply with the requirements of applicable State law.

(2) The regulatory authority may provide for a hearing or a period of

written comments on completeness of petitions. If a hearing or comment period on completeness is provided, the regulatory authority shall inform interested governmental agencies, intervenors, persons with an ownership interest of record in the property, and other persons known to the regulatory authority to have an interest in the property of the opportunity to request to participate in such a hearing or provide written comments. Proper notice to persons with an ownership interest of record in the property shall comply with the requirements of applicable State law. Notice of such a hearing shall be made by a newspaper advertisement placed in the locale of the area cover by the petition, in the newspaper providing broadest circulation in the region of the petitioned area and in any official State register of public notices. The regulatory authority shall notify the petitioner of such a hearing by certified mail. On the basis of regulatory authority review as well as consideration of all comments, the regulatory authority shall determine whether the petition is complete.

(3) Promptly after the determination that a petition is complete, the regulatory authority shall request submissions from the general public of relevant information by a newspaper advertisement placed once a week for two consecutive weeks in the locale of the area covered by the petition, in the newspaper providing broadest circulation in the region of the petitioned area, and in any offical State register of public notices.

(c) Until three days before the regulatory authority holds a hearing under § 764.17, any person may intervene in the proceeding by filing allegations of facts describing how the designation determination directly affects the intervenor, supporting evidence, a short statement identifying the petition to which the allegations pertain, and the intervenor's name, address and telephone number.

(d) Beginning from the date a petition is filed, the regulatory authority shall compile and maintain a record consisting of all documents relating to the petition filed with or prepared by the regulatory authority. The regulatory authority shall make the record available to the public for inspection free of charge and for copying at reasonable cost during all normal hours at the main office of the regulatory authority. The regulatory authority shall also maintain information at or near the area in which the petitioned land is located and make this information available to the public for inspection free of charge and for copying at reasonable cost during all normal business hours. At a minimum, this information shall include a copy of the petition.

§ 764.17 Hearing requirements.

(a) Within 10 months after receipt of a complete petition, the regulatory authority shall hold a public hearing in the locality of the area covered by the petition. If all petitioners and intervenors agree, the hearing need not be held. The regulatory authority may subpoena witnesses as necessary. The hearing may be conducted with cross-examination of expert witnesses only. A record of the hearing shall be made and preserved according to State law. No person shall bear the burden of proof or persuasion. All relevant parts of the data base and inventory system and all public comments received during the public comment period shall be included in the record and considered by the regulatory authority in its decision on the petition.

(b)(1) The regulatory authority shall give notice of the date, time, and location of the hearing to:

(i) Local, State, and Federal agencies which may have an interest in the decision on the petition;

(ii) The petitioner and the intervenors; and

(iii) Any person known by the regulatory authority to have a property interest in the petitioned area. Proper notice to persons with an ownership interest of record shall comply with the requirements of applicable State law.

(2) Notice of the hearing shall be sent by certified mail to petitioners and intervenors, and by regular mail to government agencies and property owners involved in the proceeding, and postmarked not less than 30 days

before the scheduled date of the hearing.

(c) The regulatory authority shall notify the general public of the date, time, and location of the hearing by placing a newspaper advertisement once a week for 2 consecutive weeks in the locale of the area covered by the petition and once during the week prior to the public hearing. The consecutive weekly advertisement must begin between 4 and 5 weeks before the scheduled date of the public hearing.

(d) The regulatory authority may consolidate in a single hearing the hearings required for each of several petitions which relate to areas in the same locale.

(e) Prior to designating any land areas as unsuitable for surface coal mining operations, the regulatory authority shall prepare a detailed statement, using existing and available information on the potential coal resources of the area, the demand for coal resources, and the impact of such designation on the environment, the economy, and the supply of coal.

(f) In the event that all petitioners and intervenors stipulate agreement prior to the hearing, the petition may be withdrawn from consideration.

§ 764.19 Decision.

(a) In reaching its decision, the regulatory authority shall use—

(1) The information contained in the data base and inventory system;

(2) Information provided by other governmental agencies;

(3) The detailed statement when it is prepared under § 764.17(e); and

(4) Any other relevant information submitted during the comment period.

(b) A final written decision shall be issued by the regulatory authority, including a statemtent of reasons, within 60 days of completion of the public hearing, or, if no public hearing is held, then within 12 months after receipt of the complete petition. The regulatory authority shall simultaneously send the decision by certified mail to the petitioner and intervenors and by regular mail to all other persons involved in the proceeding.

(c) The decision of the State regulatory authority with respect to a petition, or the failure of the regulatory authority to act within the time limits set forth in this section, shall be subject to judicial review by a court of competent jurisdiction in accordance with State law under section 526(e) of the Act and § 775.13 of this chapter. All relevant portions of the data base, inventory system, and public comments received during the public comment period set by the regulatory authority shall be considered and included in the record of the administrative proceeding.

§ 764.21 Data base and inventory system requirements.

(a) The regulatory authority shall develop a data base and inventory system which will permit evaluation of whether reclamation is feasible in areas covered by petitions.

(b) The regulatory authority shall include in the system information relevant to the criteria in § 762.11 of this chapter, including, but not limited to, information received from the United States Fish and Wildlife Service, the State Historic Preservation Officer, and the agency administering section 127 of the Clean Air Act, as amended (42 U.S.C. 7470 *et seq.*).

(c) The regulatory authority shall add to the data base and inventory system information—

(1) On potential coal resources of the State, demand for those resources, the environment, the economy and the supply of coal, sufficient to enable the regulatory authority to prepare the statements required by § 764.17(e); and

(2) That becomes available from petitions, publications, experiments, permit application, mining and reclamation operations, and other sources.

§ 764.23 Public information.

The regulatory authority shall:

(a) Make the information in the data base and inventory system developed under § 764.21 available to the public for inspection free of charge and for copying at reasonsable cost, except that specific information relating to location of properties proposed to be nominated to, or listed in, the National Register of Historic Places need not be disclosed if the regulatory authority determines that the disclosure of such information would create a risk of destruction or harm to such properties;

(b) Provide information to the public on the petition procedures necessary to have an area designated as unsuitable for all or certain types of surface coal mining operations or to have designations terminated and describe how the inventory and data base system can be used.

§ 764.25 Regulatory authority responsibility for implementation.

(a) The regulatory authority shall not issue permits which are inconsistent with designations made pursuant to Part 761, 762, or 764 of this chapter.

(b) The regulatory authority shall maintain a map or other unified and cumulative record of areas designated unsuitable for all or certain types of surface coal mining operations.

(c) The regulatory authority shall make available to any person any information within its control regarding designations, including mineral or elemental content which is potentially toxic in the environment but excepting proprietary information on the chemical and physical properties of the coal.

PART 769—PETITION PROCESS FOR DESIGNATION OF FEDERAL LANDS AS UNSUITABLE FOR ALL OR CERTAIN TYPES OF SURFACE COAL MINING OPERATIONS AND FOR TERMINATION OF PREVIOUS DESIGNATIONS

Sec.

769.1 Scope.
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769.11 Who may submit a petition.
769.12 Where to submit petitions.
769.13 Contents of petitions.
769.14 Initial processing, recordkeeping, and notification requirements.
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769.17 Hearing requirements.
769.18 Decisions on petitions.
769.19 Regulatory policy.

AUTHORITY: Secs. 102, 201, 501, 510, 517, 522, and 523 of Pub. L. 95-87, 91 Stat. 448, 449, 468, 480, 498, 507, 510 (30 U.S.C. 1202, 1211, 1251, 1260, 1267, 1272, and 1273).

SOURCE: 48 FR 41354, Sept. 14, 1983, unless otherwise noted.

§ 769.1 Scope.

This part establishes minimum procedures and standards for designating Federal lands as unsuitable for all or certain types of surface coal mining operations and for terminating designations pursuant to petition.

§ 769.10 Information collection.

The information collection requirements in this part do not require approval of the Office of Management and Budget under 44 U.S.C. 3507 because there are fewer than 10 respondents annually.

§ 769.11 Who may submit a petition.

Any person having an interest which is or may be adversely affected by surface coal mining operations to be conducted on Federal lands may petition the Secretary to have an area designated as unsuitable for all or certain types of surface coal mining operations, or to have an existing designation terminated. This right does not apply to areas set aside from surface coal mining operations under laws other than the Act. For the purpose of this section, a person having an interest which is or may be adversely affected must demonstrate how he or she meets an "injury in fact" test by describing the injury to his or her specific affected interests and demonstrate how he or she is among the injured.

§ 769.12 Where to submit petitions.

Each petition to have an area of Federal lands designated as unsuitable or to terminate an existing designation shall be submitted to the Director of the OSM Field Office responsible for that area where the Federal lands are located.

§ 769.13 Contents of petitions.

(a) *Designation.* The only information that a petitioner need provide to designate lands is that required under § 764.13(b) of this chapter.

(b) *Termination.* The only information that a petitioner need provide to terminate a designation is that required by § 764.13(c) of this chapter.

§ 769.14 Initial processing, recordkeeping, and notification requirements.

(a)(1) Within 30 days of receipt of a petition, OSM shall determine whether the petition is complete, ripe for further processing, and not frivolous. OSM may request other supplementary information which is readily available to be provided by the petitioner. Any request for such supplementary information from the petitioner shall not affect OSM's determination that the petition is complete for further processing.

(2) *Complete,* (i) for a designation petition, means that (A) all information required under § 764.13(b) of this chapter has been provided and (B) the information submitted by the petitioner contains significant new allegations of fact and supporting evidence not considered in any previous unsuccessful petition of Federal lands review conducted under Section 522(b) of the Act, that tends to establish that the lands are unsuitable for surface coal mining operations; and (ii) for a termination petition, means that all information required under § 764.13(c) has been provided.

(3) *Ripe,* for a designation petition, means that the petitioned lands are (i) subject to a Federal coal lease; (ii) included in a tract for which land use planning has been completed and which tract is available for further consideration for Federal coal leasing; (iii) not required to be leased because the mineral rights are not owned by the United States or are owned by the Tennessee Valley Authority; or (iv) over unleased Federal coal and are subject to surface disturbances from neighboring surface coal mining operations.

(4) *Frivolous,* for a designation or termination petition, means that: (i) The allegations of harm lack serious merit; or (ii) available information shows that no "mineable" coal resources exist in the petitioned area or that the petitioned area is not or could not be subject to related surface operations and surface impacts incident to an underground coal mine or an adjoining surface mine (mineable coal is coal with development potential as mapped or reported by the Bureau of Land Management under 43 CFR 3420.1-5(e)(1); and privately owned coal under land owned by the United States).

(b)(1) When the Director finds that the petition is incomplete or frivolous, he or she shall reject the petition with a written statement of reasons and advise the petitioner, via certified mail, that the petition may be reconsidered upon resubmittal with deficiencies cured.

(2) When the Director finds that a petition is not ripe, he or she may suspend the petition and notify the petitioner via certified mail. Where petitions are suspended, OSM, upon request of the petitioner but not more than once each year, will review the petition to determine whether it is ripe. When lack of ripeness is based on land use planning not having occurred yet on unleased Federal land, the Director shall advise the petitioner of his or her opportunity to participate in the planning process. In addition, the Director shall advise the land management agency of the issues raised by the petitioner and will request the agency to consider the issues so raised in its planning effort and to advise the petitioner of all public participation activities for the planning unit.

(c) When the Director finds that the petition is complete, ripe and not frivolous, he or she shall initiate the petition review and so advise the petitioner via certified mail.

(d)(1) Within 2 weeks after accepting the petition for further processing, OSM shall send a copy of the petition to the authorized officer of the land management agency for the officer's recommendation on the petition.

(2) The authorized officer of the appropriate Federal land management agency shall furnish a recommendation on the petition to OSM within 30 days of its receipt, if the area covered by the petition has been included in a completed Federal lands review or within 9 months, if the area has not been included in a Federal lands review.

(e) Promptly after accepting a petition for further processing, OSM shall circulate copies of the petition to, and request submissions of relevant information from, other interested governmental agencies, the petitioner, intervenors, and any person, known to OSM to have an ownership interest in the property.

(f) Where lands administered by the Department of the Interior and other Federal land management agencies are contiguous or intermingled or where the Department's resource management could affect resources on the other's land, the Director of OSM shall refer a copy of the petition to the other Federal land management agency and shall consider the agency's recommendations about designating those lands unsuitable for all or certain types of surface coal mining or terminating such designations.

(g) OSM may determine not to process any petition received insofar as it pertains to lands for which an administratively complete permit application has been filed and the first newspaper notice has been published. Based on such a determination, OSM may issue a decision on a complete and accurate permit application and shall inform the petitioner why OSM cannot consider the part of the petition pertaining to the proposed permit area.

(h) When a permit application is filed for an area where a petition has been suspended pursuant to § 769.14(b)(2), OSM shall initiate petition review and not issue a permit until a decision is made on the petition.

§ 769.15 Intervention.

Up to 3 days before the OSM holds a hearing on a petition under § 769.17, any person may intervene in the proceeding by filing a statement describing how the designation directly affects the intervenor, allegations of facts and supporting evidence, a short statement identifying the petition to which the allegations pertain, and the intervenor's name, address and telephone number.

§ 769.16 Public information.

(a) Promptly after determining that a petition is complete, the Director shall notify the general public of the receipt of the petition and request submissions of the relevant information by a newspaper advertisement placed once a week for two consecutive weeks in the newspaper providing broadest circulation in the region of the petitioned area, and in the FEDERAL REGISTER. The advertisement and FEDERAL REGISTER notice shall include a description of the boundaries of the petitioned area, the allegations of fact, and information regarding where the petition is available for public review.

(b)(1) Beginning immediately after a petition is filed, OSM shall compile and maintain a record consisting of all documents relating to the petition filed with or prepared by OSM with the exception of that information excluded under § 769.16(b)(2). OSM shall make the record available to the public for inspection free of charge and for copying at a reasonable cost during all normal business hours at its Washington, D.C. office. OSM shall also maintain information in or near the area in which the petitioned land is located; this information shall be available for public inspection, free of charge, and for copying at reasonable cost during all normal business hours. At a minimum, this information shall include a copy of the petition.

(2) OSM need not make available to any person or entity the specific location of property proposed to be nominated to be listed or listed in the National Register of Historic Places if it is determined that disclosure of that information would create a risk of destruction or harm to such properties. Withheld information must be disclosed when a designation of unsuitability would rest primarily on an allegation based on that information.

§ 769.17 Hearing requirements.

(a) Within 10 months after receipt of a complete petition, OSM shall hold a public hearing in the locality of the area covered by the petition. If all petitioners and intervenors agree, the hearing need not be held. OSM may subpoena witnesses as necessary. The hearing may be conducted with cross-examination of expert witnesses only. A record of the hearing shall be made and preserved. No person shall bear the burden of proof or persuasion. All relevant parts of the data base and inventory system and all public comments received during the public comment period shall be included in the record and considered by OSM in deciding the petition.

(b)(1) OSM shall give notice of the date, time, and location of the hearing to:

(i) Local, State, and Federal agencies which may have an interest in the decision on the petition;

(ii) The petitioner and the intervenors; and

(iii) Any person known by OSM to have a property interest in the petitioned area.

(2) Notice of the hearing shall be sent by certified mail to the petitioner and intervenors, and by regular mail to other persons involved in the proceeding, and postmarked not less than 30 days before the scheduled date of the hearing.

(3) OSM shall notify the general public of the date, time, and location of the hearing by placing a newspaper advertisement once a week for 2 consecutive weeks prior to the scheduled date of the public hearing in the locale of the area covered by the petition and once during the week prior to the scheduled date of the public hearing. The consecutive weekly advertisements must begin between 4 and 5 weeks prior to the scheduled date of the public hearing.

(c) OSM may consolidate into a single hearing the hearings required for each of several petitions which relate to areas in the same locale.

(d) If any petitions relates to an area of Federal lands which is the subject of a pending surface coal mining and reclamation operations permit application, OSM may, with consent of all petitioners and intervenors, coordinate the hearing on the petition required under paragraph (a) of this section with any hearing on the permit application or informal conference held in accordance with section 513(b) of the Act and § 740.13 of this chapter on the permit application. Nothing in this paragraph shall relieve an applicant for a permit from the burden of establishing that his or her application is in compliance with the requirements of the Federal lands program.

(e) Prior to designating any lands as unsuitable for surface coal mining operations, OSM shall issue a detailed statement on the abundance of coal resources of the area, the demand for coal resources, and the impact of such designation on the environment, the economy, and the supply of coal.

§ 769.18 Decisions on petitions.

(a) In reaching his or her decision, the Director shall use the information and consider the recommendation provided by the Federal land management agency, information provided by other governmental agencies, the detailed statement, when it is prepared under § 769.17(e), and any other relevant information submitted during the comment period.

(b) A final written decision shall be issued by the Director, including a statement of reasons, within 60 days of completion of the public hearing, or if no public hearing is held, within 12 months after receipt of the complete petition. The Director shall simultaneously send the decision by certified mail to the petitioner and the intervenors and by regular mail to all other persons involved in the proceeding.

(c) If the Director concurs with the recommendation of the surface managing agency, the Director's decision becomes final. If the Director does not concur with the recommendation, he or she shall notify the Director of the surface managing agency within 30 days after the public hearing, if any. The decision at the same time will be referred to the Secretary through respective agency heads for resolution and issuance of a final decision within 60 days after the hearing, if any.

(d) A final decision of the Director or the Secretary is subject to judicial review in accordance with § 775.13 of this chapter and section 526 (a)(2) and (b) of the Act.

§ 769.19 Regulatory policy.

Once an area of Federal lands is designated as unsuitable for all or certain types of surface coal mining operations, any permit or lease shall be conditioned in a manner so as to limit or prohibit surface coal mining operations on the designated areas in accordance with the designation.

SUBCHAPTER G—SURFACE COAL MINING AND RECLAMATION OPERATIONS PERMITS AND COAL EXPLORATION SYSTEMS UNDER REGULATORY PROGRAMS

PART 772—REQUIREMENTS FOR COAL EXPLORATION

Sec.
772.1 Scope and purpose.
772.10 Information collection.
772.11 Notice requirements for exploration removing 250 tons of coal or less.
772.12 Permit requirements for exploration removing more than 250 tons of coal.
772.13 Coal exploration compliance duties.
772.14 Requirements for commercial sale.
772.15 Public availability of information.

AUTHORITY: Pub. L. 95-87, 30 U.S.C. 1201 *et seq.*

SOURCE: 48 FR 40634, Sept. 8, 1983, unless otherwise noted.

§ 772.1 Scope and purpose.

This part establishes the requirements and procedures applicable to coal exploration operations on all lands except for Federal lands subject to the requirements of 43 CFR Parts 3480-3487.

[48 FR 40634, Sept. 8, 1983, as amended at 48 FR 44779, Sept. 30, 1983]

§ 772.10 Information collection.

The information collection requirements contained in Part 772 have been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned clearance number 1029—0033. The information is to be collected to meet the requirements of section 512(a) of the Act, which requires that coal exploration operations that substantially disturb the natural land surface be conducted in accordance with exploration rules. This information will be used to give the regulatory authority a sufficient baseline upon which to assess the impact of the proposed exploration operation during the permanent regulatory program. The obligation to respond is mandatory.

§ 772.11 Notice requirements for exploration removing 250 tons of coal or less.

(a) Any person who intends to conduct coal exploration operations outside a permit area during which 250 tons or less of coal will be removed and which may substantially disturb the natural land surface, shall, before conducting the exploration, file with the regulatory authority a written notice of intention to explore.

(b) The notice shall include—

(1) The name, address, and telephone number of the person seeking to explore;

(2) The name, address, and telephone number of the person's representative who will be present at, and responsible for, conducting the exploration activities;

(3) A narrative or map describing the exploration area;

(4) A statement of the period of intended exploration; and

(5) A description of the method of exploration to be used and the practices that will be followed to protect the environment and to reclaim the area from adverse impacts of the exploration activities in accordance with the applicable requirements of Part 815 of this chapter.

§ 772.12 Permit requirements for exploration removing more than 250 tons of coal.

(a) *Exploration permit.* Any person who intends to conduct coal exploration outside a permit area during which more than 250 tons of coal will be removed or which will take place on lands designated as unsuitable for surface mining under Subchapter F of this chapter shall, before conducting the exploration, submit an application and obtain written approval from the regulatory authority in an exploration permit.

(b) *Application information.* Each application for an exploration permit shall contain, at a minimum, the following information:

(1) The name, address, and telephone number of the applicant.

(2) The name, address and telephone number of the applicant's representative who will be present at, and re-

sponsible for, conducting the exploration activities.

(3) A narrative or map describing the proposed exploration area.

(4) A narrative description of the methods and equipment to be used to conduct the exploration and reclamation.

(5) An estimated timetable for conducting and completing each phase of the exploration and reclamation.

(6) The estimated amount of coal to be removed and a description of the methods to be used to determine the amount.

(7) A statement of why extraction of more than 250 tons of coal is necessary for exploration.

(8) A description of—

(i) Cultural or historical resources listed on the National Register of Historic Places;

(ii) Cultural or historical resources known to be eligible for listing on the National Register of Historic Places; and

(iii) Known archeological resources located within the proposed exploration area.

(9) A description of any endangered or threatened species listed pursuant to the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*) identified within the proposed exploration area.

(10) A description of the measures to be used to comply with the applicable requirements of Part 815 of this chapter.

(11) The name and address of the owner of record of the surface land and of the subsurface mineral estate of the area to be explored.

(12) A map or maps at a scale of 1:24,000, or larger, showing the areas of land to be disturbed by the proposed exploration and reclamation. The map shall specifically show existing roads, occupied dwellings, topographic and drainage features, bodies of surface water, and pipelines; proposed locations of trenches, roads, and other access routes and structures to be constructed; the location of proposed land excavations; the location of exploration holes or other drill holes or underground openings; the location of excavated earth or waste-material disposal areas; and the location of critical habitats of any endangered or threatened species listed pursuant to the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

(13) If the surface is owned by a person other than the applicant, a description of the basis upon which the applicant claims the right to enter that land for the purpose of conducting exploration and reclamation.

(c) *Public notice and opportunity to comment.* Public notice of the application and opportunity to comment shall be provided as follows:

(1) Within such time as the regulatory authority may designate, the applicant shall provide public notice of the filing of an administratively complete application with the regulatory authority in a newspaper of general circulation in the county of the proposed exploration area.

(2) The public notice shall state the name and address of the person seeking approval, the filing date of the application, the address of the regulatory authority where written comments on the application may be submitted, the closing date of the comment period, and a description of the area of exploration.

(3) Any person having an interest which is or may be adversely affected shall have the right to file written comments on the application within reasonable time limits.

(d) *Decisions on applications for exploration removing more than 250 tons of coal.* (1) The regulatory authority shall act upon an administratively complete application for a coal exploration permit and any written comments within a reasonable period of time. The approval of a coal exploration permit may be based only on a complete and accurate application.

(2) The regulatory authority shall approve a complete and accurate application for a coal exploration permit filed in accordance with this part if it finds, in writing, that the applicant has demonstrated that the exploration and reclamation described in the application will—

(i) Be conducted in accordance with this part, Part 815 of this chapter, and the applicable provisions of the regulatory program;

(ii) Not jeopardize the continued existence of an endangered or threatened species listed pursuant to section 4 of the Endangered Species Act of 1973 (16 U.S.C. 1533) or result in the destruction or adverse modification of critical habitat of those species; and

(iii) Not adversely affect any cultural or historical resources listed on the National Register of Historic Places, pursuant to the National Historic Preservation Act, as amended (16 U.S.C. Sec. 470 *et seq.*, 1976, Supp. V), unless the proposed exploration has been approved by both the regulatory authority and the agency with jurisdiction over such matters.

(3) Terms of approval issued by the regulatory authority shall contain conditions necessary to ensure that the exploration and reclamation will be conducted in compliance with this part, Part 815 of this chapter, and the regulatory program.

(e) *Notice and hearing.* (1) The regulatory authority shall notify the applicant, the appropriate local government officials, and other commenters on the application, in writing, of its decision on the application. If the application is disapproved, the notice to the applicant shall include a statement of the reason for disapproval. Public notice of the decision on each application shall be posted by the regulatory authority at a public office in the vicinity of the proposed exploration operations.

(2) Any person having an interest which is or may be adversely affected by a decision of the regulatory authority pursuant to paragraph (e)(1) of this section shall have the opportunity for administrative and judicial review as set forth in Part 775 of this chapter.

§ 772.13 Coal exploration compliance duties.

(a) All coal exploration and reclamation activities that substantially disturb the natural land surface shall be conducted in accordance with the coal exploration requirements of this part, Part 815 of this chapter, the regulatory program, and any exploration permit term or condition imposed by the regulatory authority.

(b) Any person who conducts any coal exploration in violation of the provisions of this part, Part 815 of this chapter, the regulatory program, or any exploration permit term or condition imposed by the regulatory authority shall be subject to the provisions of section 518 of the Act, Subchapter L of this chapter, and the applicable inspection and enforcement provisions of the regulatory program.

§ 772.14 Requirements for commercial sale.

Any person who extracts coal for commercial sale during coal exploration operations shall obtain a surface coal mining and reclamation operations permit for those operations from the regulatory authority under Parts 773-785 of this chapter. No surface coal mining and reclamation operations permit is required if the regulatory authority makes a prior determination that the sale is to test for coal properties necessary for the development of surface coal mining and reclamation operations for which a permit application is to be submitted at a later time.

§ 772.15 Public availability of information.

(a) Except as provided in paragraph (b) of this section, all information submitted to the regulatory authority under this part shall be made available for public inspection and copying at the local offices of the regulatory authority closest to the exploration area.

(b) The regulatory authority shall keep information confidential if the person submitting it requests in writing, at the time of submission, that it be kept confidential and the information concerns trade secrets or is privileged commercial or financial information relating to the competitive rights of the persons intending to conduct coal exploration.

(c) Information requested to be held as confidential under paragraph (b) of this section shall not be made publicly available until after notice and opportunity to be heard is afforded persons both seeking and opposing disclosure of the information.

PART 773—REQUIREMENTS FOR PERMITS AND PERMIT PROCESSING

Sec.
773.1 Scope and purpose.
773.10 Information collection.
773.11 Requirements to obtain permits.
773.12 Regulatory coordination with requirements under other laws.
773.13 Public participation in permit processing.
773.15 Review of permit applications.
773.17 Permit conditions.
773.19 Permit issuance and right of renewal.

Authority: Pub. L. 95-87, 30 U.S.C. 1201 *et seq.*

Source: 48 FR 44391, Sept. 28, 1983, unless otherwise noted.

§ 773.1 Scope and purpose.

This part provides minimum requirements for permits and permit processing and covers obtaining and reviewing permits; coordinating with other laws; public participation; permit decision and notification; permit conditions; and permit term and right of renewal.

§ 773.10 Information collection.

The information collection requirements contained in Part 773 have been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned clearance number 1029-0041. The information is being collected and the recordkeeping is required to meet the provisions of sections 506, 507, 508, 510, 511, 513, 514, 515, and 516 of the Act which provide for submission of all relevant information needed for evaluating the permit applications. The obligation to respond is mandatory.

§ 773.11 Requirements to obtain permits.

(a) *All operations.* On and after 8 months from the effective date of a permanent regulatory program within a State, no person shall engage in or carry out any surface coal mining and reclamation operations, unless such person has first obtained a permit issued by the regulatory authority, except as provided for in paragraph (b) of this section.

(b) *Continuation of initial program operations.* (1) If a State program receives final disapproval under Part 732 of this chapter, including judicial review of the disapproval, existing surface coal mining and reclamation operations may continue pursuant to the provisions of Subchapter B of this chapter and section 502 of the Act until promulgation of a complete Federal program for the State. During this period, no new permits for surface coal mining and reclamation operations shall be issued by the State. Permits that lapse during this period may continue in full force and effect within the specified permit area until promulgation of a Federal program for the State.

(2) A person authorized to conduct surface coal mining and reclamation operations under the initial regulatory program, or under a permit issued or amended by the regulatory authority in accordance with the requirements of section 502 of the Act, may conduct such operations beyond the period prescribed in paragraph (a) of this section if—

(i) Not later than 2 months following the effective date of a permanent regulatory program, regardless of litigation contesting that program, an application for a permanent regulatory program permit is filed for any operation to be conducted after the expiration of 8 months from such effective date in accordance with the provisions of the regulatory program;

(ii) The regulatory authority has not yet rendered an initial administrative decision approving or disapproving the permit; and

(iii) The surface coal mining and reclamation operation is conducted in compliance with the requirements of the Act, Subchapter B of this chapter, applicable State statutes and regulations, and all terms and conditions of the initial program authorization or permit.

(3) No new initial program permits may be issued after the effective date of a State program unless the application was received prior to such date.

(c) *Continued operations under Federal program permits.* (1) A permit issued by the Director pursuant to a Federal program for a State shall be valid under any superseding State program approved by the Secretary.

(2) The Federal permittee shall have the right to apply to the State regula-

tory authority for a State permit to supersede the Federal permit.

(3) The State regulatory authority may review a permit issued pursuant to the superseded Federal program to determine that the requirements of the Act and the approved State program are not violated by the Federal permit, and to the extent that the approved State program contains additional requirements not contained in the Federal program for the State, the State regulatory authority shall—

(i) Inform the permittee in writing;

(ii) Provide the permittee an opportunity for a hearing;

(iii) Provide the permittee a reasonable opportunity to resubmit the permit application in whole or in part, as appropriate; and

(iv) Provide the permittee a reasonable time to conform ongoing surface coal mining and reclamation operations to the requirements of the State program.

(d) *Continued operations under State program permits.* (1) A permit issued pursuant to a previously approved or conditionally approved State program shall be valid under a superseding Federal program.

(2) Immediately following promulgation of a Federal program, the Director shall review the permits issued under the previously approved State program to determine that the requirements of the Act, this chapter, and the Federal program are not violated. If the Director determines that a permit was granted contrary to the requirments of this Act, the Director shall—

(i) Inform the permittee in writing;

(ii) Provide the permittee an opportunity for a hearing;

(iii) Provide the permittee a reasonable opportunity to resubmit the permit application in whole or in part, as appropriate; and

(iv) Provide the permittee a reasonable time to conform ongoing surface coal mining and reclamation operations to the requirements of the Federal program, as prescribed in the Federal program for the State.

§ 773.12 Regulatory coordination with requirements under other laws.

Each regulatory program shall, to avoid duplication, provide for the coordination of review and issuance of permits for surface coal mining and reclamation operations with applicable requirements of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*); the Fish and Wildlife Coordination Act, as amended (16 U.S.C. 661 *et seq.*); the Migratory Bird Treaty Act of 1918, as amended (16 U.S.C. 703 *et seq.*); the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470 *et seq.*); the Bald Eagle Protection Act, as amended (16 U.S.C. 668a); Executive Order 11593; and for Federal programs only, the Archeological and Historic Preservation Act of 1974 (16 U.S.C. 469 *et seq.*).

§ 773.13 Public participation in permit processing.

(a) *Filing and public notice.* (1) Upon submission of an administratively complete application, an applicant for a permit, significant revision of a permit under § 774.13, or renewal of a permit under § 774.15, shall place an advertisement in a local newspaper of general circulation in the locality of the proposed surface coal mining and reclamation operation at least once a week for four consecutive weeks. A copy of the advertisement as it will appear in the newspaper shall be submitted to the regulatory authority. The advertisement shall contain, at a minimum, the following:

(i) The name and business address of the applicant.

(ii) A map or description which clearly shows or describes the precise location and boundaries of the proposed permit area and is sufficient to enable local residents to readily identify the proposed permit area. It may include towns, bodies of water, local landmarks, and any other information which would identify the location. If a map is used, it shall indicate the north direction.

(iii) The location where a copy of the application is available for public inspection.

(iv) The name and address of the regulatory authority where written comments, objections, or requests for informal conferences on the application may be submitted under paragraphs (b) and (c) of this section.

(v) If an applicant seeks a permit to mine within 100 feet of the outside right-of-way of a public road or to relocate or close a public road, except where public notice and hearing have previously been provided for this particular part of the road in accordance with § 761.12(d) of this chapter; a concise statement describing the public road, the particular part to be relocated or closed, and the approximate timing and duration of the relocation or closing.

(vi) If the application includes a request for an experimental practice under § 785.13, a statement indicating that an experimental practice is requested and identifying the regulatory provisions for which a variance is requested.

(2) The applicant shall make an application for a permit, significant revision under § 774.13, or renewal of a permit under § 774.15 available for the public to inspect and copy by filing a full copy of the application with the recorder at the courthouse of the county where the mining is proposed to occur, or an accessible public office approved by the regulatory authority. This copy of the application need not include confidential information exempt from disclosure under paragraph (d) of this section. The application required by this paragraph shall be filed by the first date of newspaper advertisement of the application. The applicant shall file any changes to the application with the public office at the same time the change is submitted to the regulatory authority.

(3) Upon receipt of an administratively complete application for a permit, a significant revision to a permit under § 774.13, or a renewal of a permit under § 774.15, the regulatory authority shall issue written notification indicating the applicant's intention to mine the described tract of land, the application number or other identifier, the location where the copy of the application may be inspected, and the location where comments on the application may be submitted. The notification shall be sent to—

(i) Local governmental agencies with jurisdiction over or an interest in the area of the proposed surface coal mining and reclamation operation, including but not limited to planning agencies, sewage and water treatment authorities, water companies; and

(ii) All Federal or State governmental agencies with authority to issue permits and licenses applicable to the proposed surface coal mining and reclamation operation and which are part of the permit coordinating process developed in accordance with section 503(a)(6) or section 504(h) of the Act, or § 773.12; or those agencies with an interest in the proposed operation, including the U.S. Department of Agriculture Soil Conservation Service district office, the local U.S. Army Corps of Engineers district engineer, the National Park Service, State and Federal fish and wildlife agencies, and the historic preservation officer.

(b) *Comments and objections on permit applications.* (1) Within a reasonable time established by the regulatory authority, written comments or objections on an application for a permit, significant revision to a permit under § 774.13, or renewal of a permit under § 774.15 may be submitted to the regulatory authority by public entities notified under paragraph (a)(3) of this section with respect to the effects of the proposed mining operations on the environment within their areas of responsibility.

(2) Written objections to an application for a permit, significant revision to a permit under § 774.13, or renewal of a permit under § 774.15 may be submitted to the regulatory authority by any person having an interest which is or may be adversely affected by the decision on the application, or by an officer or head of any Federal, State, or local government agency or authority, within 30 days after the last publication of the newspaper notice required by paragraph (a) of this section.

(3) The regulatory authority shall upon receipt of such written comments or objections—

(i) Transmit a copy of the comments or objections to the applicants; and

(ii) File a copy for public inspection at the same public office where the application is filed.

(c) *Informal conferences.* (1) Any person having an interest which is or may be adversely affected by the decision on the application, or an officer or a head of a Federal, State, or local government agency, may request in writing that the regulatory authority hold an informal conference on the application for a permit, significant revision to a permit under § 774.13, or renewal of a permit under § 774.15. The request shall—

(i) Briefly summarize the issues to be raised by the requestor at the conference;

(ii) State whether the requestor desires to have the conference conducted in the locality of the proposed operation; and

(iii) Be filed with the regulatory authority no later than 30 days after the last publication of the newspaper advertisement required under paragraph (a) of this section.

(2) Except as provided in paragraph (c)(3) of this section, if an informal conference is requested in accordance with paragraph (c)(1) of this section, the regulatory authority shall hold an informal conference within a reasonable time following the receipt of the request. The informal conference shall be conducted as follows:

(i) If requested under paragraph (c)(1)(ii) of this section, it shall be held in the locality of the proposed surface coal mining and reclamation operation.

(ii) The date, time, and location of the informal conference shall be sent to the applicant and other parties to the conference and advertised by the regulatory authority in a newspaper of general circulation in the locality of the proposed surface coal mining and reclamation operation at least 2 weeks before the scheduled conference.

(iii) If requested in writing by a conference requestor at a reasonable time before the conference, the regulatory authority may arrange with the applicant to grant parties to the conference access to the proposed permit area and, to the extent that the applicant has the right to grant access to it, to the adjacent area prior to the established date of the conference for the purpose of gathering information relevant to the conference.

(iv) The requirements of section 5 of the Administrative Procedure Act, as amended (5 U.S.C. 554), shall not apply to the conduct of the informal conference. The conference shall be conducted by a representative of the regulatory authority, who may accept oral or written statements and any other relevant information from any party to the conference. An electronic or stenographic record shall be made of the conference, unless waived by all the parties. The record shall be maintained and shall be accessible to the parties of the conference until final release of the applicant's performance bond or other equivalent guarantee pursuant to Subchapter J of this chapter.

(3) If all parties requesting the informal conference withdraw their request before the conference is held, the informal conference may be canceled.

(4) Informal conference held in accordances with this section may be used by the regulatory authority as the public hearing required under § 761.12(d) of this chapter on proposed relocation or closing of public roads.

(d) *Pubic availability of permit applications*—(1) *General availability.* Except as provided in paragraph (d)(2) or (d)(3) of this section, all applications for permits; revisions; renewals; and transfers, assignments or sales of permit rights on file with the regulatory authority shall be available, at reasonable times, for public inspection and copying.

(2) *Limited availability.* Except as provided in paragraph (d)(3)(i) of this section, information pertaining to coal seams, test borings, core samplings, or soil samples in an application shall be made available to any person with an interest which is or may be adversely affected. Information subject to this paragraph shall be made available to the public when such information is required to be on public file pursuant to State law.

(3) *Confidentiality.* The regulatory authority shall provide procedures, including notice and opportunity to be heard for persons both seeking and opposing disclosure, to ensure confiden-

tiality of qualified confidential information, which shall be clearly identified by the applicant and submitted separately from the remainder of the application. Confidential information is limited to—

(i) Information that pertains only to the analysis of the chemical and physical properties of the coal to be mined, except information on components of such coal which are potentially toxic in the environment;

(ii) Information required under section 508 of the Act that is not on public file pursuant to State law and that the applicant has requested in writing to be held confidential;

(iii) Information on the nature and location of archeological resources on public land and Indian land as required under the Archeological Resources Protection Act of 1979 (Pub. L. 96-95, 93 Stat. 721, 16 U.S.C. 470).

§ 773.15 Review of permit applications.

(a) *General.* (1) The regulatory authority shall review the application for a permit, revision, or renewal; written comments and objections submitted; and records of any informal conference or hearing held on the application and issue a written decision, within a reasonable time set by the regulatory authority, either granting, requiring modification of, or denying the application. If an informal conference is held under § 773.13(c), the decision shall be made within 60 days of the close of the conference, unless a later time is necessary to provide an opportunity for a hearing under paragraph (b)(2) of this section.

(2) The applicant for a permit or revision of a permit shall have the burden of establishing that his application is in compliance with all the requirements of the regulatory program.

(b) *Review of violations.* (1) The regulatory authority shall make a finding that any surface coal mining and reclamation operation owned or controlled by the applicant is not currently in violation of the Act or in violation of any Federal law, rule, or regulation, or any State law, rule, or regulation enacted pursuant to Federal law, rule, or regulation pertaining to air or water environmental protection. If such a finding cannot be made the regulatory authority shall require the applicant, before the issuance of the permit, to either—

(i) Submit to the regulatory authority proof that the current violation has been or is in the process of being corrected to the satisfaction of the agency that has jurisdiction over the violation; or

(ii) Establish for the regulatory authority that the applicant has filed and is presently pursuing, in good faith, a direct administrative or judicial appeal to contest the validity of the current violation. If the initial judicial review authority under § 775.13 either denies a stay applied for in the appeal or affirms the violation, then the applicant shall promptly submit the proof required under paragraph (b)(1)(i) of this section.

(2) The regulatory authority may issue a permit conditionally pending the outcome of an appeal described in paragraph (b)(1)(ii) of this section.

(3) If the regulatory authority makes a finding that the applicant, or the operator specified in the application, controls or has controlled surface coal mining and reclamation operations with a demonstrated pattern of willful violations of the Act of such nature and duration and with such resulting irreparable damage to the environment as to indicate an intent not to comply with the Act, the application shall not be granted. Before such a finding becomes final, the applicant or operator shall be afforded an opportunity for an adjudicatory hearing on the determination as provided for in § 775.11.

(c) *Written findings for permit application approval.* No permit application or application for a significant revision of a permit shall be approved unless the application affirmatively demonstrates and the regulatory authority finds, in writing, on the basis of information set forth in the application or from information otherwise available that is documented in the approval, the following:

(1) The application is complete and accurate and the applicant has complied with all requirements of the Act and the regulatory program.

(2) The applicant has demonstrated that reclamation as required by the

Act and the regulatory program can be accomplished under the reclamation plan contained in the permit application.

(3) The proposed permit area is—

(i) Not within an area under study or administrative proceedings under a petition, filed pursuant to Parts 764 and 769 of this chapter, to have an area designated as unsuitable for surface coal mining operations, unless the applicant demonstrates that before January 4, 1977, he has made substantial legal and financial commitments in relation to the operation covered by the permit application; or

(ii) Not within an area designated as unsuitable for mining pursuant to Parts 762, 764, and 769 of this chapter or subject to the prohibitions or limitations of §§ 761.11 and 761.12 of this chapter.

(4) For mining operations where the private mineral estate to be mined has been severed from the private surface estate, the applicant has submitted to the regulatory authority the documentation required under § 778.15(b) of this chapter.

(5) The regulatory authority has made an assessment of the probable cumulative impacts of all anticipated coal mining on the hydrologic balance in the cumulative impact area and has determined that the proposed operation has been designed to prevent material damage to the hydrologic balance outside the permit area.

(6) The applicant has demonstrated that any existing structure will comply with § 701.11(d), and the applicable performance standards of Subchapter B or K of this chapter.

(7) The applicant has paid all reclamation fees from previous and existing operations as required by Subchapter R of this chapter.

(8) The applicant has satisfied the applicable requirements of Part 785 of this chapter.

(9) The applicant has, if applicable, satisfied the requirements for approval of a long-term, intensive agricultural postmining land use, in accordance with the requirements of § 816.111(d) or 817.111(d).

(10) The operation would not affect the continued existence of endangered or threatened species or result in destruction or adverse modification of their critical habitats, as determined under the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

(11) Surface coal mining and reclamation operations will not adversely affect a private family burial ground. Adversely affecting a private family burial ground shall not include relocation authorized by applicable State law or regulations.

(d) *Performance bond submittal.* If the regulatory authority decides to approve the application, it shall require that the applicant file the performance bond or provide other equivalent guarantee before the permit is issued, in accordance with the provisions of Subchapter J of this chapter.

§ 773.17 Permit conditions.

Each permit issued by the regulatory authority shall be subject to the following conditions:

(a) The permittee shall conduct surface coal mining and reclamation operations only on those lands that are specifically designated as the permit area on the maps submitted with the application and authorized for the term of the permit and that are subject to the performance bond or other equivalent guarantee in effect pursuant to Subchapter J of this chapter.

(b) The permittee shall conduct all surface coal mining and reclamation operations only as described in the approved application, except to the extent that the regulatory authority otherwise directs in the permit.

(c) The permittee shall comply with the terms and conditions of the permit, all applicable performance standards of the Act, and the requirements of the regulatory program.

(d) Without advance notice, delay, or a search warrant, upon presentation of appropriate credentials, the permittee shall allow the authorized representatives of the Secretary and the State regulatory authority to—

(1) Have the right of entry provided for in §§ 842.13 and 840.12 of this chapter; and

(2) Be accompanied by private persons for the purpose of conducting an inspection in accordance with Parts 840 and 842, when the inspection is in

response to an alleged violation reported to the regulatory authority by the private person.

(e) The permittee shall take all possible steps to minimize any adverse impact to the environment or public health and safety resulting from noncompliance with any term or condition or the permit, including, but not limited to—

(1) Any accelerated or additional monitoring necessary to determine the nature and extent of noncompliance and the results of the noncompliance;

(2) Immediate implementation of measures necessary to comply; and

(3) Warning, as soon as possible after learning of such noncompliance, any person whose health and safety is in imminent danger due to the noncompliance.

(f) As applicable, the permittee shall comply with § 701.11(d) and Subchapter B or K of this chapter for compliance, modification, or abandonment of existing structures.

(g) The operator shall pay all reclamation fees required by Subchapter R of this chapter for coal produced under the permit for sale, transfer or use, in the manner required by that subchapter.

[48 FR 44391, Sept. 28, 1983, as amended at 49 FR 27499, July 5, 1984]

§ 773.19 Permit issuance and right of renewal.

(a) *Decision*. If the application is approved, the permit shall be issued upon submittal of a performance bond in accordance with Subchapter J. If the application is disapproved, specific reasons therefore shall be set forth in the notification required by paragraph (b) of this section.

(b) *Notification*. The regulatory authority shall issue written notification of the decision to the following persons and entities:

(1) The applicant, each person who files comments or objections to the permit application, and each party to an informal conference.

(2) The local governmental officials in the local political subdivision in which the land to be affected is located within 10 days after the issuance of a permit, including a description of the location of the land.

(3) If the regulatory authority is a State agency, the local OSM office.

(c) *Permit term*. Each permit shall be issued for a fixed term of 5 years or less, unless the requirements of § 778.17 of this chapter are met.

(d) *Right of renewal*. Permit application approval shall apply to those lands that are specifically designated as the permit area on the maps submitted with the application and for which the application is complete and accurate. Any valid permit issued in accordance with paragraph (a) of this section shall carry with it the right of successive renewal, within the approved boundaries of the existing permit, upon expiration of the term of the permit, in accordance with § 774.15.

(e) *Initiation of operations*. (1) A permit shall terminate if the permittee has not begun the surface coal mining and reclamation operation covered by the permit within 3 years of the issuance of the permit.

(2) The regulatory authority may grant a reasonable extension of time for commencement of these operations, upon receipt of a written statement showing that such an extension of time is necessary, if—

(i) Litigation precludes the commencement or threatens substantial economic loss to the permittee; or

(ii) There are conditions beyond the control and without the fault or negligence of the permittee.

(3) With respect to coal to be mined for use in a synthetic fuel facility or specified major electric generating facility, the permittee shall be deemed to have commenced surface mining operations at the time that the construction of the synthetic fuel or generating facility is initiated.

(4) Extensions of time granted by the regulatory authority under this paragraph shall be specifically set forth in the permit, and notice of the extension shall be made public by the regulatory authority.

PART 774—REVISION; RENEWAL; AND TRANSFER, ASSIGNMENT, OR SALE OF PERMIT RIGHTS

Sec.
774.1 Scope and purpose.
774.10 Information collection.
774.11 Regulatory authority review of permits.
774.13 Permit revisions.
774.15 Permit renewals.
774.17 Transfer, assignment, or sale of permit rights.

AUTHORITY: Pub. L. 95-87, 30 U.S.C. 1201 *et seq.*

SOURCE: 48 FR 44395, Sept. 28, 1983, unless otherwise noted.

§ 774.1 Scope and purpose.

This part provides requirements for revision; renewal; and transfer, assignment, or sale of permit rights.

§ 774.10 Information collection.

The information collection requirements contained in Part 774 have been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned clearance number 1029-0041. The information is being collected and the recordkeeping is required to meet the provisions of sections 506, 507, 508, 510, 511, 513, 514, 515, and 516 of the Act which provide for submission of all relevant information needed for evaluating the applications for permit action. The obligation to respond is mandatory.

§ 774.11 Regulatory authority review of permits.

(a) The regulatory authority shall review each permit issued and outstanding under an approved regulatory program during the term of the permit. This review shall occur not later than the middle of each permit term and as follows:

(1) Permits with a term longer than 5 years shall be reviewed no less frequently than the permit midterm or every 5 years, whichever is more frequent.

(2) Permits with variances granted in accordance with § 785.14 of this chapter (mountaintop removal) and § 785.18 of this chapter (variance for delay in contemporaneous reclamation requirement in combined surface and underground mining operations) of this chapter shall be reviewed no later than 3 years from the date of issuance of the permit unless, for variances issued in accordance with § 785.14 of this chapter, the permittee affirmatively demonstrates that the proposed development is proceeding in accordance with the terms of the permit.

(3) Permits containing experimental practices issued in accordance with § 785.13 of this chapter and permits with a variance from approximate original contour requirements in accordance with § 785.16 shall be reviewed as set forth in the permit or at least every 2½ years from the date of issuance as required by the regulatory authority, in accordance with §§ 785.13(g) and 785.16(c) of this chapter, respectively.

(b) After the review required by paragraph (a) of this section, or at any time, the regulatory authority may, by order, require reasonable revision of a permit in accordance with § 774.13 to ensure compliance with the Act and the regulatory program.

(c) Any order of the regulatory authority requiring revision of a permit shall be based upon written findings and shall be subject to the provisions for administrative and judicial review in Part 775 of this chapter. Copies of the order shall be sent to the permittee.

(d) Permits may be suspended or revoked in accordance with Subchapter L of this chapter.

§ 774.13 Permit revisions.

(a) *General.* During the term of a permit, the permittee may submit an application to the regulatory authority for a revision of the permit.

(b) *Application requirements and procedures.* the regulatory authority shall establish—

(1) A time period within which the regulatory authority will approve or disapprove an application for a permit revision; and

(2) Guidelines establishing the scale or extent of revisions for which all the permit application information requirements and procedures of this subchapter, including notice, public participation, and notice of decision requirements of §§ 773.13, 773.19(b) (1)

and (3), and 778.21, shall apply. Such requirements and procedures shall apply at a minimum to all significant permit revisions.

(c) *Criteria for approval.* No application for a permit revision shall be approved unless the application demonstrates and the regulatory authority finds that reclamation as required by the Act and the regulatory program can be accomplished, applicable requirements under § 773.15(c) which are pertinent to the revision are met, and the application for a revision complies with all requirements of the Act and the regulatory program.

(d) *Request to change permit boundary.* Any extensions to the area covered by the permit, except incidental boundary revisions, shall be made by application for a new permit.

§ 774.15 Permit renewals.

(a) *General.* A valid permit, issued pursuant to an approved regulatory program, shall carry with it the right of successive renewal, within the approved boundaries of the existing permit, upon expiration of the term of the permit.

(b) *Application requirements and procedures.* (1) An application for renewal of a permit shall be filed with the regulatory authority at least 120 days before expiration of the existing permit term.

(2) An application for renewal of a permit shall be in the form required by the regulatory authority and shall include at a minimum—

(i) The name and address of the permittee, the term of the renewal requested, and the permit number or other identifier;

(ii) Evidence that a liability insurance policy or adequate self-insurance under § 800.60 of this chapter will be provided by the applicant for the proposed period of renewal;

(iii) Evidence that the performance bond in effect for the operation will continue in full force and effect for any renewal requested, as well as any additional bond required by the regulatory authorities pursuant to Subchapter J of this chapter;

(iv) A copy of the proposed newspaper notice and proof of publication of same, as required by § 778.21 of this chapter; and

(v) Additional revised or updated information required by the regulatory authority.

(3) Applications for renewal shall be subject to the requirements of public notification and public participation contained in §§ 773.13 and 773.19(b) of this chapter.

(4) If an application for renewal includes any proposed revisions to the permit, such revisions shall be identified and subject to the requirements of § 774.13.

(c) *Approval process*—(1) *Criteria for approval.* The regulatory authority shall approve a complete and accurate application for permit renewal, unless it finds, in writing that—

(i) The terms and conditions of the existing permit are not being satisfactorily met;

(ii) The present surface coal mining and reclamation operations are not in compliance with the environmental protection standards of the Act and the regulatory program;

(iii) The requested renewal substantially jeopardizes the operator's continuing ability to comply with the Act and the regulatory program on existing permit areas;

(iv) The operator has not provided evidence of having liability insurance or self-insurance as required in § 800.60 of this chapter;

(v) The operator has not provided evidence that any performance bond required to be in effect for the operation will continue in full force and effect for the proposed period of renewal, as well as any additional bond the regulatory authority might require pursuant to Subchapter J of this chapter; or

(vi) Additional revised or updated information required by the regulatory authority has not been provided by the applicant.

(2) *Burden of proof.* In the determination of whether to approve or deny a renewal of a permit, the burden of proof shall be on the opponents of renewal.

(3) *Alluvial valley floor variance.* If the surface coal mining and reclamation operation authorized by the original permit was not subject to the

standards contained in sections 510(b)(5) (A) and (B) of the Act and § 785.19 of this chapter, because the permittee complied with the exceptions in the proviso to section 510(b)(5) of the Act, the portion of the application for renewal of the permit that addresses new land areas previously identified in the reclamation plan for the original permit shall not be subject to the standards contained in sections 510(b)(5) (A) and (B) of the Act and § 785.19 of this chapter.

(d) *Renewal term.* Any permit renewal shall be for a term not to exceed the period of the original permit established under § 773.19.

(e) *Notice of decision.* The regulatory authority shall send copies of its decision to the applicant, to each person who filed comments or objections on the renewal, to each party to any informal conference held on the permit renewal, and to OSM if OSM is not the regulatory authority.

(f) *Administrative and judicial review.* Any person having an interest which is or may be adversely affected by the decision of the regulatory authority shall have the right to administrative and judicial review set forth in Part 775 of this chapter.

§ 774.17 Transfer, assignment, or sale of permit rights.

(a) *General.* No transfer, assignment, or sale of rights granted by a permit shall be made without the prior written approval of the regulatory authority.

(b) *Application requirements.* An applicant for approval of the transfer, assignment, or sale of permit rights shall—

(1) Provide the regulatory authority with an application for approval of the proposed transfer, assignment, or sale including—

(i) The name and address of the existing permittee and permit number or other identifier;

(ii) A brief description of the proposed action requiring approval; and

(iii) The legal, financial, compliance, and related information required by Part 778 of this chapter for the applicant for approval of the transfer, assignment, or sale of permit rights.

(2) Advertise the filing of the application in a newspaper of general circulation in the locality of the operations involved, indicating the name and address of the applicant, the permittee, the permit number or other identifier, the geographic location of the permit, and the address to which written comments may be sent;

(3) Obtain appropriate performance bond coverage in an amount sufficient to cover the proposed operations, as required under Subchapter J of this chapter.

(c) *Public participation.* Any person having an interest which is or may be adversely affected by a decision on the transfer, assignment, or sale of permit rights, including an official of any Federal, State, or local government agency, may submit written comments on the application to the regulatory authority within a time specified by the regulatory authority.

(d) *Criteria for approval.* The regulatory authority may allow a permittee to transfer, assign, or sell permit rights to a successor, if it finds in writing that the successor—

(1) Is eligible to receive a permit in accordance with § 773.15 (b) and (c) of this chapter;

(2) Has submitted a performance bond or other guarantee, or obtained the bond coverage of the original permittee, as required by Subchapter J of this chapter; and

(3) Meets any other requirements specified by the regulatory authority.

(e) *Notification.* (1) The regulatory authority shall notify the permittee, the successor, commenters, and OSM, if OSM is not the regulatory authority, of its findings.

(2) The successor shall immediately provide notice to the regulatory authority of the consummation of the transfer, assignment, or sale of permit rights.

(f) *Continued operation under existing permit.* The successor in interest shall assume the liability and reclamation responsibilities of the existing permit and shall conduct the surface coal mining and reclamation operations in full compliance with the Act, the regulatory program, and the terms and conditions of the existing permit, unless the applicant has obtained a new or revised permit as provided in this subchapter.

PART 775—ADMINISTRATIVE AND JUDICIAL REVIEW OF DECISIONS

Sec.
775.1 Scope and purpose.
775.11 Administrative review.
775.13 Judicial review.

AUTHORITY: Pub. L. 30 U.S.C. 1201 *et seq.*

SOURCE: 48 FR 44397, Sept. 28, 1983, unless otherwise noted.

§ 775.1 Scope and purpose.

This part provides requirements for administrative and judicial review of decisions on permits.

§ 775.11 Administrative review.

(a) *General.* Within 30 days after an applicant or permittee is notified of the decision of the regulatory authority concerning an application for approval of exploration required under Part 772 of this chapter, a permit for surface coal mining and reclamation operations, a permit revision, a permit renewal, or a transfer, assignment, or sale of permit rights, the applicant, permittee, or any person with an interest which is or may be adversely affected may request a hearing on the reasons for the decision, in accordance with this section.

(b) *Administrative hearings under State programs.* (1) The regulatory authority shall start the administrative hearing within 30 days of such request. The hearing shall be on the record and adjudicatory in nature. No person who presided at an informal conference under § 773.13(c) shall either preside at the hearing or participate in the decision following the hearing or administrative appeal.

(2) The regulatory authority may, under such conditions as it prescribes, grant such temporary relief as it deems appropriate, pending final determination of the proceeding, if—

(i) All parties to the proceeding have been notified and given an opportunity to be heard on a request for temporary relief;

(ii) The person requesting that relief shows that there is a substantial likelihood that he or she will prevail on the merits of the final determination of the proceeding;

(iii) The relief sought will not adversely affect the public health or safety, or cause significant, imminent environmental harm to land, air, or water resources; and

(iv) The relief sought is not the issuance of a permit where a permit has been denied, in whole or in part, by the regulatory authority except that continuation under an existing permit may be allowed where the operation has a valid permit issued under section 510 of the Act.

(3) The hearing shall be conducted under the following conditions:

(i) The hearing authority may administer oaths and affirmations, subpoena witnesses and written or printed materials, compel attendance of witnesses or production of those materials, compel discovery, and take evidence, including, but not limited to, site inspections of the land to be affected and other surface coal mining and reclamation operations carried on by the applicant in the general vicinity of the proposed operations.

(ii) A verbatim record of each public hearing required by this section shall be made, and a transcript made available on the motion of any party or by order of the hearing authority.

(iii) Ex parte contacts between representatives of the parties appearing before the hearing authority and the hearing authority shall be prohibited.

(4) Within 30 days after the close of the record, the hearing authority shall issue and furnish the applicant and each person who participated in the hearing with the written findings of fact, conclusions of law, and order of the hearing authority with respect to the appeal of the decision.

(5) The burden of proof at such hearings shall be on the party seeking to reverse the decision of the regulatory authority.

(c) *Administrative hearings under Federal programs and Federal lands programs.* All hearings, under a Federal program for a State or a Federal lands program except as may be modified by a cooperative agreement pursuant to Part 745 of this chapter, on an application for approval of exploration, a permit for surface coal mining and reclamation operations, permit revision, a permit renewal, or a transfer, assignment, or sale of permit rights shall be of record and governed by 5 U.S.C. 554 and 43 CFR Part 4.

§ 775.13 Judicial review.

(a) *General.* Any applicant or any person with an interest which is or may be adversely affected and who has participated in the administrative hearings as an objector may appeal as provided in paragraph (b) or (c) of this section if—

(1) The applicant or person is aggrieved by the decision of the hearing authority in the administrative hearing conducted pursuant to § 775.11 of this chapter; or

(2) Either the regulatory authority or the hearing authority for administrative review under § 775.11 of this chapter fails to act within applicable time limits specified in the Act, this chapter, or the regulatory program.

(b) *Judicial review under State programs.* The action of the hearing authority identified in paragraph (a) of this section shall be subject to judicial review by a court of competent jurisdiction, as provided for in the State program, but the availability of such review shall not be construed to limit the operation of the rights established in section 520 of the Act.

(c) *Judicial review under Federal programs and Federal lands programs.* The action of the hearing authority identified in paragraph (a) of this section is subject to judicial review by the U.S. District Court for the district where the coal exploration or surface coal mining and reclamation operation is or would be located, except for judicial review of State regulatory authority actions in a State court of competent jurisdiction as may be provided for in a cooperative agreement, in the time and manner provided for in section 526 (a)(2), (b) and (e) of the Act. The availability of such review shall not be construed to limit the operation of the rights established in section 520 of the Act.

PART 777—GENERAL CONTENT REQUIREMENTS FOR PERMIT APPLICATIONS

Sec.
777.1 Scope.
777.10 Information collection.
777.11 Format and contents.
777.13 Reporting of technical data.
777.14 Maps and plans: General requirements.
777.15 Completeness.
777.17 Permit fees.

AUTHORITY: Pub. L. 95-87, 30 U.S.C. 1201 *et seq.*

SOURCE: 48 FR 44398, Sept. 28, 1983, unless otherwise noted.

§ 777.1 Scope.

This part provides minimum requirements concerning the general content for permit applications under a State or Federal program.

§ 777.10 Information collection.

The information collection requirements contained in Part 777 have been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned clearance number 1029-0032. The information is being collected to meet the requirements of sections 507, 508, and 510(b) of the Act. It provides general requirements for permit application format and contents. The obligation to respond is mandatory.

§ 777.11 Format and contents.

(a) An application shall—

(1) Contain current information, as required by this subchapter;

(2) Be clear and concise; and

(3) Be filed in the format required by the regulatory authority.

(b) If used in the application, referenced materials shall either be provided to the regulatory authority by the applicant or be readily available to the regulatory authority. If provided, relevant portions of referenced published materials shall be presented briefly and concisely in the application by photocopying or abstracting and with explicit citations.

(c) Applications for permits; revisions; renewals; or transfers, sales or assignments of permit rights shall be verified under oath, by a responsible official of the applicant, that the information contained in the application is true and correct to the best of the official's information and belief.

§ 777.13 Reporting of technical data.

(a) All technical data submitted in the application shall be accompanied by the names of persons or organizations that collected and analyzed the data, dates of the collection and analysis of the data, and descriptions of the methodology used to collect and analyze the data.

(b) Technical analyses shall be planned by or under the direction of a professional qualified in the subject to be analyzed.

§ 777.14 Maps and plans: General requirements.

(a) Maps submitted with applications shall be presented in a consolidated format, to the extent possible, and shall include all the types of information that are set forth on topographic maps of the U.S. Geological Survey of the 1:24,000 scale series. Maps of the permit area shall be at a scale of 1:6,000 or larger. Maps of the adjacent area shall clearly show the lands and waters within those areas and be in a scale determined by the regulatory authority, but in no event smaller than 1:24,000.

(b) All maps and plans submitted with the application shall distinguish among each of the phases during which surface coal mining operations were or will be conducted at any place within the life of operations. At a minimum, distinctions shall be clearly shown among those portions of the life of operations in which surface coal mining operations occurred—

(1) Prior to August 3, 1977;

(2) After August 3, 1977, and prior to either—

(i) May 3, 1978; or

(ii) In the case of an applicant or operator which obtained a small operator's exemption in accordance with § 710.12 of this chapter, January 1, 1979;

(3) After May 3, 1978 (or January 1, 1979, for persons who received a small operator's exemption) and prior to the approval of the applicable regulatory program;

(4) After the estimated date of issuance of a permit by the regulatory authority under the approved regulatory program.

§ 777.15 Completeness.

An application for a permit to conduct surface coal mining and reclamation operations shall be complete and shall include at a minimum—

(a) For surface mining activities, the information required under Parts 778, 779, and 780 of this chapter, and, as applicable to the operation, Part 785 of this chapter; and

(b) For underground mining activities, the information required under Parts 778, 783, and 784 of this chapter, and, as applicable to the operation, Part 785 of this chapter.

§ 777.17 Permit fees.

An application for a surface coal mining and reclamation permit shall be accompanied by a fee determined by the regulatory authority. The fee may be less than, but shall not exceed, the actual or anticipated cost of reviewing, administering, and enforcing the permit. The regulatory authority may develop procedures to allow the fee to be paid over the term of the permit.

PART 778—PERMIT APPLICATIONS—MINIMUM REQUIREMENTS FOR LEGAL, FINANCIAL, COMPLIANCE, AND RELATED INFORMATION

Sec.

778.1 Scope and purpose.
778.10 Information collection.
778.13 Identification of interests.
778.14 Violation information.
778.15 Right-of-entry information.
778.16 Status of unsuitability claims.
778.17 Permit term.
778.18 Insurance.
778.21 Proof of publication.
778.22 Facilities or structures used in common.

AUTHORITY: Pub. L. 95-87, 30 U.S.C. 1201 *et seq.*

SOURCE: 48 FR 44399, Sept. 28, 1983, unless otherwise noted.

§ 778.1 Scope and purpose.

This part establishes the minimum requirements for the permit applications for surface coal mining and reclamation operations under a State or Federal program. This part covers minimum legal, financial, and compliance requirements and general information that must be contained in permit applications. This part applies to any person who submits an application to a regulatory authority for a permit to conduct surface coal mining and reclamation operations.

§ 778.10 Information collection.

The information collection requirements contained in Part 778 have been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned clearance numbers 1029-0034 and 1029-0037. The information is being collected to meet the requirements of sections 507(b), 508(a) and 510(c) of the Act, which require that persons conducting surface mining activities submit to the regulatory authority relevant information regarding ownership and control of the property to be affected by the activities, compliance status, and history. This information will be used by the regulatory authority to ensure that all legal, financial, and compliance requirements are satisfied prior to making a decision to issue or deny a permit under the permanent regulatory program. The obligation to respond is mandatory.

§ 778.13 Identification of interests.

An application shall contain the following:

(a) A statement as to whether the applicant is a corporation, partnership, single proprietorship, association, or other business entity.

(b) Names, addresses, and telephone numbers of the applicant, the operator (if different from the applicant), and the applicant's resident agent who will accept service of process.

(c) For applicants other than single proprietorships, where applicable—

(1) Name and address of each officer, partner, principal, principal shareholder, and director or other person performing a function similar to a director.

(2) All names under which the applicant, partner, or principal shareholder operates or previously operated a surface coal mining and reclamation operation in the United States within the 5 years preceding the date of application.

(d) A statement of any pending surface coal mining and reclamation operation permit applications in the United States, and of all current and previous coal mining permits in the United States held during the 5 years preceding the date of the application by any person identified in paragraph (c)(2) of this section. Such statement shall provide permit or application numbers or other identifiers and the identity of the regulatory authority for each operation listed.

(e) The name and address of each legal or equitable owner of record of the surface and mineral property to be mined, each holder of record of any leasehold interest in the property to be mined, and any purchaser of record under a real estate contract for the property to be mined.

(f) The name and address of each owner of record of all property (surface and subsurface) contiguous to any part of the proposed permit area.

(g) The Mine Safety and Health Administration (MSHA) numbers for all mine-associated structures that require MSHA approval.

(h) A statement of all lands, interest in lands, options, or pending bids on interests held or made by the applicant for lands contiguous to the area described in the permit application. If requested by the applicant, any information required by this paragraph which is not on public file pursuant to State law shall be held in confidence by the regulatory authority, as provided under § 773.13(d)(3)(ii) of this chapter.

§ 778.14 Violation information.

An application shall contain the following:

(a) A statement of whether the applicant or any subsidiary, affiliate, or persons controlled by or under common control with the applicant has—

(1) Had a Federal or State coal mining permit suspended or revoked in the 5 years preceding the date of submission of the application; or

(2) Forfeited a performance bond or similar security deposited in lieu of bond.

(b) A brief explanation of the facts involved if any such suspension, revocation, or forfeiture referred to in paragraphs (a) (1) and (2) of this section has occurred, including—

(1) Identification number and date of issuance of the permit, and the date and amount of bond or similar security;

(2) Identification of the authority that suspended or revoked the permit or forfeited the bond and the stated reasons for the action;

(3) The current status of the permit, bond, or similar security involved;

(4) The date, location, and type of any administrative or judicial proceedings initiated concerning the suspension, revocation, or forfeiture; and

(5) The current status of the proceedings.

(c) A list of all violation notices received by the applicant or any subsidiary, affiliate, or persons controlled by or under common control with the applicant in connection with any surface coal mining and reclamation operation during the 3-year period preceding the application date, for violations of any provision of the Act; or of any law, rule, or regulation of the United States, or of any State law, rule, or regulation enacted pursuant to Federal law, rule, or regulation pertaining to air or water environmental protection. The application shall also contain the following information about each violation notice:

(1) The date of issuance and identity of the issuing regulatory authority, department, or agency;

(2) A brief description of the violation alleged in the notice;

(3) The date, location, and type of any administrative or judicial proceedings initiated concerning the violation, including, but not limited to, proceedings initiated by any person identified in paragraph (c) of this section to obtain administrative or judicial review of the violation;

(4) The current status of the proceedings and of the violation notice; and

(5) The actions, if any, taken by any person identified in paragraph (c) of this section to abate the violation.

§ 778.15 Right-of-entry information.

(a) An application shall contain a description of the documents upon which the applicant bases his legal right to enter and begin surface coal mining and reclamation operations in the permit area and shall state whether that right is the subject of pending litigation. The description shall identify the documents by type and date of execution, identify the specific lands to which the document pertains, and explain the legal rights claimed by the applicant.

(b) Where the private mineral estate to be mined has been severed from the private surface estate, an applicant shall also submit—

(1) A copy of the written consent of the surface owner for the extraction of coal by surface mining methods;

(2) A copy of the conveyance that expressly grants or reserves the right to extract coal by surface mining methods; or

(3) If the conveyance does not expressly grant the right to extract the coal by surface mining methods, documentation that under applicable State law, the applicant has the legal authority to extract the coal by those methods.

(c) Nothing in this section shall be construed to provide the regulatory authority with the authority to adjudicate property rights disputes.

§ 778.16 Status of unsuitability claims.

(a) An application shall contain available information as to whether the proposed permit area is within an area designated as unsuitable for surface coal mining and reclamation operations or is within an area under study for designation in an administrative proceeding under Parts 762, 764, and 769 of this chapter.

(b) An application in which the applicant claims the exemption described in § 762.13(c) of this chapter shall contain information supporting the assertion that the applicant made substantial legal and financial commitments before January 4, 1977, concerning the proposed surface coal mining and reclamation operations.

(c) An application in which the applicant proposes to conduct surface coal mining activities within 300 feet of an occupied dwelling or within 100 feet of a public road shall contain the necessary information and meet the requirements of § 761.12 of this chapter.

§ 778.17 Permit term.

(a) Each application shall state the anticipated or actual starting and termination date of each phase of the surface coal mining and reclamation operation and the anticipated number of acres of land to be affected during each phase of mining over the life of the mine.

(b) If the applicant requires an initial permit term in excess of 5 years in order to obtain necessary financing for equipment and the opening of the operation, the application shall—

(1) Be complete and accurate covering the specified longer term; and

(2) Show that the proposed longer term is reasonably needed to allow the applicant to obtain financing for equipment and for the opening of the operation with the need confirmed, in writing, by the applicant's proposed source of financing.

§ 778.18 Insurance.

An application shall contain either a certificate of liability insurance or evidence of self-insurance in compliance with § 800.60 of this chapter.

§ 778.21 Proof of publication.

A copy of the newspaper advertisements of the application for a permit, significant revision of a permit, or renewal of a permit, or proof of publication of the advertisements which is acceptable to the regulatory authority shall be filed with the regulatory authority and shall be made a part of the application not later than 4 weeks after the last date of publication as required by § 773.13(a)(1) of this chapter.

§ 778.22 Facilities or structures used in common.

The plans of a facility or structure that is to be shared by two or more separately permitted mining operations may be included in one permit application and referenced in the other applications. In accordance with Part 800 of this chapter, each permittee shall bond the facility or structure unless the permittees sharing it agree to another arrangement for assuming their respective responsibilities. If such agreement is reached, then the application shall include a copy of the agreement between or among the parties setting forth the respective bonding responsibilities of each party for the facility or structure. The agreement shall demonstrate to the satisfaction of the regulatory authority that all responsibilities under this chapter for the facility or structure will be met.

PART 779—SURFACE MINING PERMIT APPLICATIONS—MINIMUM REQUIREMENTS FOR INFORMATION ON ENVIRONMENTAL RESOURCES

Sec.

779.1 Scope.
779.2 Objectives.
779.4 Responsibilities.
779.10 Information collection.
779.11 General requirements.
779.12 General environmental resources information.
779.18 Climatological information.
779.19 Vegetation information.
779.20 Fish and wildlife resources information.
779.21 Soil resources information.
779.22 Land-use information.
779.24 Maps: General requirements.
779.25 Cross sections, maps, and plans.

AUTHORITY: Pub. L. 95-87, 91 Stat. 445 (30 U.S.C. 1201 *et seq.*) and sec. 115, Pub. L. 98-146, 97 Stat. 938 (30 U.S.C. 1257).

SOURCE: 44 FR 15354, Mar. 13, 1979, unless otherwise noted.

§ 779.1 Scope.

This part establishes the minimum requirements for the Secretary's approval of regulatory program provisions for the environmental resources contents of applications for surface mining activities.

§ 779.2 Objectives.

The objectives of this part are to ensure that each application provides to the regulatory authority a complete and accurate description of the environmental resources that may be impacted or affected by proposed surface mining activities.

§ 779.4 Responsibilities.

(a) It is the responsibility of the applicant to provide, except where specifically exempted in this part, all information required by this part in the application.

(b) It is the responsibility of State and Federal government agencies to provide information for applications as specifically required by this part.

§ 779.10 Information collection.

The information collection requirements contained in 30 CFR 779.11, 779.12, 779.13, 779.14, 779.15, 779.16, 779.17, 779.18, 779.19, 779.20, 779.21, 779.22, 779.24, 779.25 and 779.27 have been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned clearance number 1029-0035. The information is being collected to meet the requirements of sections 507 and 508 of Pub. L. 95-87, which require the applicant to present an adequate description of the existing pre-mining environmental resources within and around the proposed mine plan area. This information will be used by the regulatory authority to determine whether the applicant can comply with the performance standards of the regulations for surface coal mining and whether reclamation of these areas is feasible. The obligation to respond is mandatory.

[47 FR 33686, Aug. 4, 1983]

§ 779.11 General requirements.

Each permit application shall include a description of the existing, premining environmental resources within the proposed permit area and adjacent areas that may be affected or impacted by the proposed surface mining activities.

[44 FR 15354, Mar. 13, 1979, as amended at 45 FR 51550, Aug. 4, 1980]

§ 779.12 General environmental resources information.

Each application shall describe and identify—

(a) The lands subject to surface coal mining operations over the estimated life of those operations and the size, sequence, and timing of the subareas for which it is anticipated that individual permits for mining will be sought; and

(b) The nature of cultural and historic resources listed or eligible for listing on the National Register of Historic Places and known archeological features within the proposed permit and adjacent areas. The description shall be based on all available information, including, but not limited to, data of State and local archeological, historical, and cultural preservation agencies.

[44 FR 15354, Mar. 13, 1979, as amended at 45 FR 51550, Aug. 4, 1980; 48 FR 14822, Apr. 5, 1983]

§ 779.18 Climatological information.

(a) When requested by the regulatory authority, the application shall contain a statement of the climatological factors that are representative of the proposed permit area, including:

(1) The average seasonal precipitation;

(2) The average direction and velocity of prevailing winds; and

(3) Seasonal temperature ranges.

(b) The regulatory authority may request such additional data as deemed necessary to ensure compliance with the requirements of this subchapter.

[44 FR 15354, Mar. 13, 1979, as amended at 45 FR 51550, Aug. 4, 1980]

§ 779.19 Vegetation information.

(a) The permit application shall, if required by the regulatory authority, contain a map that delineates existing vegetative types and a description of the plant communities within the proposed permit area and within any proposed reference area. This description shall include information adequate to predict the potential for reestablishing vegetation.

(b) When a map or aerial photograph is required, sufficient adjacent areas shall be included to allow evaluation of vegetation as important habitat for fish and wildlife for those species of fish and wildlife identified under 30 CFR 779.20.

§ 779.20 Fish and wildlife resources information.

(a) Each application shall include a study of fish and wildlife and their habitats within the proposed mine plan area and the portions of the adjacent areas where effects on such resources may reasonably be expected to occur.

(b) Prior to initiating such studies, the applicant shall contact the regulatory authority to determine what fish and wildlife resources information will be required.

(c) The regulatory authority, in consultation with the appropriate State and Federal fish and wildlife management, conservation, or land management agencies having responsibilities for fish and wildlife or their habitats, shall determine the level of detail and the areas of such studies, according to—

(1) Published data and other information;

(2) Site-specific information obtained by the applicant; and

(3) Written guidance obtained from agencies consulted.

§ 779.21 Soil resources information.

(a) The applicant shall provide adequate soil survey information of the permit area consisting of the following:

(1) A map delineating different soils;

(2) Soil identification;

(3) Soil description; and

(4) Present and potential productivity of existing soils.

(b) Where the applicant proposes to use selected overburden materials as a supplement or substitute for topsoil, the application shall provide results of the analyses, trials, and tests required under 30 CFR 816.22.

EDITORIAL NOTE: For a document temporarily suspending § 779.21 in part, see 45 FR 51548, Aug. 4, 1980.

§ 779.22 Land-use information.

(a) The application shall contain a statement of the condition, capability, and productivity of the land within the proposed permit area, including—

(1) A map and supporting narrative of the uses of the land existing at the time of the filing of the application. If the premining use of the land was changed within 5 years before the anticipated date of beginning the proposed operations, the historic use of the land shall also be described.

(2) A narrative of land capability and productivity, which analyzes the land-use description under paragraph (a) of this section in conjunction with other environmental resources information required under this part. The narrative shall provide analyses of:

(i) The capability of the land before any mining to support a variety of uses, giving consideration to soil and foundation characteristics, topography, vegetative cover and the hydrology of the proposed permit area; and

(ii) The productivity of the proposed permit area before mining, expressed as average yield of food, fiber, forage, or wood products from such lands obtained under high levels of management. The productivity shall be determined by yield data or estimates for similar sites based on current data from the U.S. Department of Agriculture, State agricultural universities or appropriate State natural resource or agricultural agencies.

(b) The application shall state whether the proposed permit area has been previously mined, and, if so, the following information, if available—

(1) The type of mining method used;

(2) The coal seams or other mineral strata mined;

(3) The extent of coal or other minerals removed;

(4) The approximate dates of past mining; and

(5) The uses of the land preceding mining.

(c) The application shall contain a description of the existing land uses and land use classifications under local law, if any, of the proposed permit and adjacent areas.

[44 FR 15354, Mar. 13, 1979, as amended at 45 FR 51550, Aug. 4, 1980]

§ 779.24 Maps: General requirements.

The permit application shall include maps showing—

(a) All boundaries of lands and names of present owners of record of those lands, both surface and subsurface, included in or contiguous to the permit area;

(b) The boundaries of land within the proposed permit area upon which the applicant has the legal right to enter and begin surface mining activities;

(c) The boundaries of all areas proposed to be affected over the estimated total life of the proposed surface mining activities, with a description of size, sequence, and timing of the mining of sub-areas for which it is anticipated that additional permits will be sought;

(d) The location of all buildings on and within 1,000 feet of the proposed permit area, with identification of the current use of the buildings;

(e) The location of surface and subsurface man-made features within, passing through, or passing over the proposed permit area, including, but not limited to major electric transmission lines, pipelines, and agricultural drainage tile fields;

(f) The location and boundaries of any proposed reference areas for determining the success of revegetation;

(g) The locations of water supply intakes for current users of surface water flowing into, out of, and within a hydrologic area defined by the regulatory authority, and those surface waters which will receive discharges from affected areas in the proposed permit area;

(h) Each public road located in or within 100 feet of the proposed permit area;

(i) The boundaries of any public park and locations of any cultural or historical resources listed or eligible for listing in the National Register of Historic Places and known archeological sites within the permit and adjacent areas.

(j) Each public or private cemetery, Indian burial ground, or other area where human bodies are interred, that is located in or within 100 feet of the proposed permit area;

(k) Any land within the proposed permit area which is within the boundaries of any units of the National System of Trails or the Wild and Scenic Rivers System, including study rivers designated under section 5(a) of the Wild and Scenic Rivers Act; and

(l) Other relevant information required by the regulatory authority.

[44 FR 15354, Mar. 13, 1979; 44 FR 49685, Aug. 24, 1979, as amended at 45 FR 51550, Aug. 4, 1980; 48 FR 14822, Apr. 5, 1983; 48 FR 41356, Sept. 14, 1983]

§ 779.25 Cross sections, maps, and plans.

(a) The application shall include cross sections, maps, and plans showing—

(1) Elevations and locations of test borings and core samplings;

(2) Elevations and locations of monitoring stations used to gather data for water quality and quantity, fish and wildlife, and air quality, if required, in preparation of the application;

(3) Nature, depth, and thickness of the coal seams to be mined, any coal or rider seams above the seam to be mined, each stratum of the overburden, and the stratum immediately below the lowest coal seam to be mined;

(4) All coal crop lines and the strike and dip of the coal to be mined within the proposed permit area;

(5) Location and extent of known workings of active, inactive, or abandoned underground mines, including mine openings to the surface within the proposed permit and adjacent areas;

(6) Location and extent of sub-surface water, if encountered, within the proposed permit or adjacent areas;

(7) Location of surface water bodies such as streams, lakes, ponds, springs, constructed or natural drains, and irrigation ditches within the proposed permit and adjacent areas;

(8) Location and extent of existing or previously surface-mined areas within the proposed permit area;

(9) Location and dimensions of existing areas of spoil, waste, and non-coal waste disposal, dams, embankments, other impoundments, and water treatment and air pollution control facilities within the proposed permit area;

(10) Location, and depth if available, of gas and oil wells within the proposed permit area and water wells in the permit area and adjacent area;

(11) Sufficient slope measurements to adequately represent the existing land surface configuration of the proposed permit area, measured and recorded according to the following:

(i) Each measurement shall consist of an angle of inclination along the prevailing slope extending 100 linear feet above and below or beyond the coal outcrop or the area to be disturbed or, where this is impractical, at locations specified by the regulatory authority.

(ii) Where the area has been previously mined, the measurements shall extend at least 100 feet beyond the limits of mining disturbances, or any other distance determined by the regulatory authority to be representative of the premining configuration of the land.

(iii) Slope measurements shall take into account natural variations in slope, to provide accurate representation of the range of natural slopes and reflect geomorphic differences of the area to be disturbed.

(b) Cross sections, maps and plans included in a permit application as required by this section shall be prepared by, or under the direction of, and certified by a qualified, registered, professional engineer, a professional geologist, or in any State which authorizes land surveyors to prepare and certify such cross sections, maps and plans, a qualified, registered, professional, land surveyor, with assistance from experts in related fields such as landscape architecture, and shall be updated as required by the regulatory authority.

[44 FR 15354, Mar. 13, 1979, as amended at 45 FR 51550, Aug. 4, 1980; 50 FR 16198, Apr. 24, 1985]

PART 780—SURFACE MINING PERMIT APPLICATIONS—MINIMUM REQUIREMENT FOR RECLAMATION AND OPERATION PLAN

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AUTHORITY: Pub. L. 95-87, 91 Stat. 445 (30 U.S.C. 1201 *et seq.*) and sec. 115, Pub. L. 98-146, 97 Stat. 938 (30 U.S.C. 1257).

SOURCE: 44 FR 15357, Mar. 13, 1979, unless otherwise noted.

§ 780.1 Scope.

This part provides the minimum requirements for the Secretary's approval of regulatory program provisions for the mining operations and reclamation plan portions of applications for permits for surface mining activities, except to the extent that different requirements for those plans are established under 30 CFR Part 785.

§ 780.2 Objectives.

The objectives of this part are to insure that the regulatory authority is provided with comprehensive and reliable information on proposed surface mining activities, and to ensure that those activities are allowed to be conducted only in compliance with the Act, this chapter, and the regulatory program.

§ 780.4 Responsibilities.

(a) It is the responsibility of the applicant to provide to the regulatory authority all of the information required by this part, except where specifically exempted in this part.

(b) It is the responsibility of State and Federal governmental agencies to provide information to the regulatory authority where specifically required in this part.

§ 780.10 Information collection.

The information collection requirements contained in 30 CFR 780.11, 780.12, 780.13, 780.14, 780.15, 780.16, 780.18, 780.21, 780.23, 780.25, 780.27, 780.31, 780.33, 780.35 and 780.37 have been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned clearance number 1029-0036. The information is being collected to meet the requirements of Sections 507(b), 508(a) and 515(b) of Pub. L. 95-87. This information will be used by the regulatory authority in determining whether the applicant can comply with the performance standards of the regulations for surface coal mining and whether reclamation of these areas is feasible. The obligation to respond is mandatory.

[47 FR 33686, Aug. 4, 1982]

§ 780.11 Operation plan: General requirements.

Each application shall contain a description of the mining operations proposed to be conducted during the life of the mine within the proposed permit area, including, at a minimum, the following:

(a) A narrative description of the type and method of coal mining procedures and proposed engineering techniques, anticipated annual and total production of coal, by tonnage, and the major equipment to be used for all aspects of those operations; and

(b) A narrative explaining the construction, modification, use, maintenance, and removal of the following facilities (unless retention of such facilities is necessary for postmining land use as specified in § 816.133):

(1) Dams, embankments, and other impoundments;

(2) Overburden and topsoil handling and storage areas and structures;

(3) Coal removal, handling, storage, cleaning, and transportation areas and structures;

(4) Spoil, coal processing waste, and non-coal waste removal, handling, storage, transportation, and disposal areas and structures;

(5) Mine facilities; and

(6) Water and air pollution control facilities.

[44 FR 15357, Mar. 13, 1979, as amended at 45 FR 51550, Aug. 4, 1980]

§ 780.12 Operation plan: Existing structures.

(a) Each application shall contain a description of each existing structure proposed to be used in connection with or to facilitate the surface coal mining and reclamation operation. The description shall include—

(1) Location;

(2) Plans of the structure which describe its current condition;

(3) Approximate dates on which construction of the existing structure was begun and completed; and

(4) A showing, including relevant monitoring data or other evidence, whether the structure meets the performance standards of Subchapter K (Permanent Program Standards) of this chapter or, if the structure does not meet the performance standards of Subchapter K of this chapter, a showing whether the structure meets the performance standards of Subchapter B (Interim Program Standards) of this chapter.

(b) Each application shall contain a compliance plan for each existing structure proposed to be modified or reconstructed for use in connection with or to facilitate the surface coal mining and reclamation operation. The compliance plan shall include—

(1) Design specifications for the modification or reconstruction of the structure to meet the design and performance standards of Subchapter K of this chapter;

(2) A construction schedule which shows dates for beginning and completing interim steps and final reconstruction;

(3) Provisions for monitoring the structure during and after modification or reconstruction to ensure that the performance standards of Subchapter K of this chapter are met; and

(4) A showing that the risk of harm to the environment or to public health or safety is not significant during the period of modification or reconstruction.

§ 780.13 Operation plan: Blasting.

(a) *Blasting plan.* Each application shall contain a blasting plan for the proposed permit area, explaining how the applicant will comply with the requirements of §§ 816.61 through 816.68 of this chapter. This plan shall include, at a minimum, information setting forth the limitations the operator will meet with regard to ground vibration and airblast, the bases for those limitations, and the methods to be applied in controlling the adverse effects of blasting operations.

(b) *Monitoring system.* Each application shall contain a description of any system to be used to monitor compliance with the standards of § 816.67 including the type, capability, and sensitivity of any blast-monitoring equipment and proposed procedures and locations of monitoring.

(c) *Blasting near underground mines.* Blasting operations within 500 feet of active underground mines require approval of the State and Federal regulatory authorities concerned with the health and safety of underground miners.

[48 FR 9806, Mar. 8, 1983]

§ 780.14 Operation plan: Maps and plans.

Each application shall contain maps and plans as follows:

(a) The maps and plans shall show the lands proposed to be affected throughout the operation and any change in a facility or feature to be caused by the proposed operations, if the facility or feature was shown under 30 CFR 779.24 through 779.25.

(b) The following shall be shown for the proposed permit area:

(1) Buildings, utility corridors and facilities to be used;

(2) The area of land to be affected within the proposed permit area, according to the sequence of mining and reclamation;

(3) Each area of land for which a performance bond or other equivalent guarantee will be posted under Subchapter J of this chapter;

(4) Each coal storage, cleaning and loading area;

(5) Each topsoil, spoil, coal waste, and non-coal waste storage area;

(6) Each water diversion, collection, conveyance, treatment, storage, and discharge facility to be used;

(7) Each air pollution collection and control facility;

(8) Each source of waste and each waste disposal facility relating to coal processing or pollution control;

(9) Each facility to be used to protect and enhance fish and wildlife and related environmental values;

(10) Each explosive storage and handling facility; and

(11) Location of each sedimentation pond, permanent water impoundment, coal processing waste bank, and coal processing waste dam and embankment, in accordance with 30 CFR 780.25, and fill area for the disposal of excess spoil in accordance 30 CFR 780.35.

(c) Except as provided in §§ 780.25(a)(2), 780.25(a)(3), 780.35(a), 816.71(b), 816.73(c) and 816.81(c) of this chapter, cross sections, maps and plans required under paragraphs (b)(4), (5), (6), (10) and (11) of this section shall be prepared by, or under the direction of, and certified by a qualified registered professional engineer, a professional geologist, or in any State which authorizes land surveyors to prepare and certify such cross sections, maps and plans, a qualified, registered, professional, land surveyor, with assistance from experts in related fields such as landscape architecture.

[44 FR 15357, Mar. 13, 1979; 44 FR 49685, Aug. 24, 1979, as amended at 45 FR 51550, Aug. 4, 1980; 48 FR 14822, Apr. 5, 1983; 50 FR 16199, Apr. 24, 1985]

§ 780.15 Air pollution control plan.

(a) For all surface mining activities with projected production rates exceeding 1,000,000 tons of coal per year and located west of the 100th meridian west longitude, the application shall contain an air pollution control plan which includes the following:

(1) An air quality monitoring program to provide sufficient data to evaluate the effectiveness of the fugitive dust control practices proposed under paragraph (a)(2) of this section to comply with Federal and State air quality standards; and

(2) A plan for fugitive dust control practices as required under 30 CFR 816.95.

(b) For all other surface mining activities the application shall contain an air pollution control plan which includes the following:

(1) An air quality monitoring program, if required by the regulatory authority, to provide sufficient data to evaluate the effectiveness of the fugitive dust control practices under paragraph (b)(2) of this section to comply with applicable Federal and State air quality standards; and

(2) A plan for fugitive dust control practices, as required under 30 CFR 816.95.

§ 780.16 Fish and wildlife plan.

(a) Each application shall contain a fish and wildlife plan, consistent with 30 CFR 816.97 which provides:

(1) A statement of how the plan will minimize disturbances and adverse impacts on fish and wildlife and related environmental values during surface coal mining and reclamation operations, and how enhancement of these resources will be achieved, where practicable. The plan shall cover the mine plan area and portions of adjacent areas as determined by the regulatory authority pursuant to § 779.20(c).

(2) If the applicant states that it will not be practicable, in accordance with paragraph (a)(1) of this section, to achieve a condition which clearly shows a trend toward enhancement of fish and wildlife resources at the time revegetation has been sucessfully completed under 30 CFR 816.111 through 816.116, a statement shall be provided which establishes, to the satisfaction of the regulatory authority, why it is not practicable to achieve such a condition.

(b) A statement explaining how the applicant will utilize impact control measures, management techniques, and monitoring methods to protect or enhance the following, if they are to be affected by the proposed activities:

(1) Threatened or endangered species of plants or animals listed by the Secretary under the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) and their critical habitats;

(2) Species such as eagles, migratory birds or other animals protected by State or Federal law, and their habitats; or other species identified through the consultation process pursuant to § 779.20; or

(3) Habitats of unusually high value for fish and wildlife, such as wetlands, riparian areas, cliffs supporting raptors, areas offering special shelter or protection, reproduction and nursery areas, and wintering areas:

[44 FR 15357, Mar. 13, 1979, as amended at 48 FR 44779, Sept. 30, 1983]

§ 780.18 Reclamation plan: General requirements.

(a) Each application shall contain a plan for reclamation of the lands within the proposed permit area, showing how the applicant will comply with section 515 of the Act, Subchapter K of this chapter, and the environmental protection performance standards of the regulatory program. The plan shall include, at a minimum, all information required under 30 CFR 780.18 through 780.37.

(b) Each plan shall contain the following information for the proposed permit area—

(1) A detailed timetable for the completion of each major step in the reclamation plan;

(2) A detailed estimate of the cost of reclamation of the proposed operations required to be covered by a performance bond under Subchapter J of this chapter, with supporting calculations for the estimates;

(3) A plan for backfilling, soil stabilization, compacting, and grading, with contour maps or cross sections that show the anticipated final surface configuration of the proposed permit area, in accordance with 30 CFR 816.102 through 816.107;

(4) A plan for removal, storage, and redistribution of topsoil, subsoil, and other material to meet the requirements of § 816.22 of this chapter. A demonstration of the suitability of topsoil substitutes or supplements under § 816.22(b) of this chapter shall be based upon analysis of the thickness of soil horizons, total depth, texture, percent coarse fragments, pH, and areal extent of the different kinds of soils. The regulatory authority may require other chemical and physical analyses, field-site trials, or greenhouse tests if determined to be necessary or desirable to demonstrate the

suitability of the topsoil substitutes or supplements.

(5) A plan for revegetation as required in 30 CFR 816.111 through 816.116, including, but not limited to, descriptions of the—

(i) Schedule of revegetation;

(ii) Species and amounts per acre of seeds and seedlings to be used;

(iii) Methods to be used in planting and seeding;

(iv) Mulching techniques;

(v) Irrigation, if appropriate, and pest and disease control measures, if any; and

(vi) Measures proposed to be used to determine the success of revegetation as required in 30 CFR 816.116.

(vii) A soil testing plan for evaluation of the results of topsoil handling and reclamation procedures related to revegetation.

(6) A description of the measures to be used to maximize the use and conservation of the coal resource as required in 30 CFR 816.59;

(7) A description of measures to be employed to ensure that all debris, acid-forming and toxic-forming materials, and materials constituting a fire hazard are disposed of in accordance with 30 CFR 816.89 and 816.102 and a description of the contingency plans which have been developed to preclude sustained combustion of such materials;

(8) A description, including appropriate cross sections and maps, of the measures to be used to seal or manage mine openings, and to plug, case, or manage exploration holes, other bore holes, wells, and other openings within the proposed permit area, in accordance with 30 CFR 816.13 through 816.15; and

(9) A description of steps to be taken to comply with the requirements of the Clean Air Act (42 U.S.C. 7401 *et seq.*), the Clean Water Act (33 U.S.C. 1251 *et seq.*), and other applicable air and water quality laws and regulations and health and safety standards.

[44 FR 15357, Mar. 13, 1979, as amended at 48 FR 22100, May 16, 1983; 48 FR 44779, Sept. 30, 1983]

§ 780.21 Hydrologic information.

(a) *Sampling and analysis methodology.* All water-quality analyses performed to meet the requirements of this section shall be conducted according to the methodology in the 15th edition of "Standard Methods for the Examination of Water and Wastewater," which is incorporated by reference, or the methodology in 40 CFR Parts 136 and 434. Water quality sampling performed to meet the requirements of this section shall be conducted according to either methodology listed above when feasible. "Standard Methods for the Examination of Water and Wastewater," is a joint publication of the American Public Health Association, the American Water Works Association, and the Water Pollution Control Federation and is available from the American Public Health Association, 1015 15th Street, NW., Washington, DC 20036. This document is also available for inspection at the Office of the Federal Register Information Center, Room 8301, 1100 L Street, NW., Washington, D.C.; at the Office of the OSM Administrative Record, U.S. Department of the Interior, Room 5315, 1100 L Street, NW., Washington, D.C.; at the OSM Eastern Technical Service Center, U.S. Department of the Interior, Building 10, Parkway Center, Pittsburgh, Pa.; and at the OSM Western Technical Service Center, U.S. Department of the Interior, Brooks Tower, 1020 15th Street, Denver, Colo. This incorporation by reference was approved by the Director of the Federal Register on October 26, 1983. This document is incorporated as it exists on the date of the approval, and a notice of any change in it will be published in the FEDERAL REGISTER.

(b) *Baseline information.* The application shall include the following baseline hydrologic information, and any additional information required by the regulatory authority.

(1) *Ground-water information.* The location and ownership for the permit and adjacent areas of existing wells, springs, and other ground-water resources, seasonal quality and quantity of ground water, and usage. Water quality descriptions shall include, at a minimum, total dissolved solids or specific conductance corrected to 25°C, pH, total iron, and total manganese. Ground-water quantity descriptions

shall include, at a minimum, approximate rates of discharge or usage and depth to the water in the coal seam, and each water-bearing stratum above and potentially impacted stratum below the coal seam.

(2) *Surface-water information.* The name, location, ownership, and description of all surface-water bodies such as streams, lakes, and impoundments, the location of any discharge into any surface-water body in the proposed permit and adjacent areas, and information on surface-water quality and quantity sufficient to demonstrate seasonal variation and water usage. Water quality descriptions shall include, at a minimum, baseline information on total suspended solids, total dissolved solids or specific conductance corrected to 25° C, pH, total iron, and total manganese. Baseline acidity and alkalinity information shall be provided if there is a potential for acid drainage from the proposed mining operation. Water quantity descriptions shall include, at a minimum, baseline information on seasonal flow rates.

(3) *Supplemental information.* If the determination of the probable hydrologic consequences (PHC) required by paragraph (f) of this section indicates that adverse impacts on or off the proposed permit area may occur to the hydrologic balance, or that acid-forming or toxic-forming material is present that may result in the contamination of ground-water or surface-water supplies, then information supplemental to that required under paragraphs (b) (1) and (2) of this section shall be provided to evaluate such probable hydrologic consequences and to plan remedial and reclamation activities. Such supplemental information may be based upon drilling, aquifer tests, hydrogeologic analysis of the water-bearing strata, flood flows, or analysis of other water quality or quantity characteristics.

(c) *Baseline cumulative impact area information.* (1) Hydrologic and geologic information for the cumulative impact area necessary to assess the probable cumulative hydrologic impacts of the proposed operation and all anticipated mining on surface- and ground-water systems as required by paragraph (g) of this section shall be provided to the regulatory authority if available from appropriate Federal or State agencies.

(2) If the information is not available from such agencies, then the applicant may gather and submit this information to the regulatory authority as part of the permit application.

(3) The permit shall not be approved until the necessary hydrologic and geologic information is available to the regulatory authority.

(d) *Modeling.* The use of modeling techniques, interpolation or statistical techniques may be included as part of the permit application, but actual surface- and ground-water information may be required by the regulatory authority for each site even when such techniques are used.

(e) *Alternative water source information.* If the PHC determination required by paragraph (f) of this section indicates that the proposed mining operation may proximately result in contamination, diminution, or interruption of an underground or surface source of water within the proposed permit or adjacent areas which is used for domestic, agricultural, industrial or other legitimate purpose, then the application shall contain information on water availability and alternative water sources, including the suitability of alternative water sources for existing premining uses and approved postmining land uses.

(f) *Probable hydrologic consequences determination.* (1) The application shall contain a determination of the probable hydrologic consequences (PHC) of the proposed operation upon the quality and quantity of surface and ground water under seasonal flow conditions for the proposed permit and adjacent areas.

(2) The PHC determination shall be based on baseline hydrologic, geologic and other information collected for the permit application and may include data statistically representative of the site;

(3) The PHC determination shall include findings on:

(i) Whether adverse impacts may occur to the hydrologic balance;

(ii) Whether acid-forming or toxic-forming materials are present that could result in the contamination of surface or ground-water supplies;

(iii) Whether the proposed operation may proximately result in contamination, diminution or interruption of an underground or surface source of water within the proposed permit or adjacent areas which is used for domestic, agricultural, industrial, or other legitimate purpose; and

(iv) What impact the proposed operation will have on:

(A) Sediment yield from the disturbed area (B) acidity, total suspended and dissolved solids, and other important water quality parameters of local impact; (C) flooding or streamflow alteration; (D) ground-water and surface-water availability and, (E) other characteristics as required by the regulatory authority.

(4) An application for a permit revision shall be reviewed by the regulatory authority to determine whether a new or updated PHC determination shall be required.

(g) *Cumulative hydrologic impact assessment.* (1) The regulatory authority shall provide an assessment of the probable cumulative hydrologic impacts (CHIA) of the proposed operation and all anticipated mining upon surface- and ground-water systems in the cumulative impact area. The CHIA shall be sufficient to determine, for purposes of permit approval, whether the proposed operation has been designed to prevent material damage to the hydrologic balance outside the permit area. The regulatory authority may allow the applicant to submit data and analyses relevant to the CHIA with the permit application.

(2) An application for a permit revision shall be reviewed by the regulatory authority to determine whether a new or updated CHIA shall be required.

(h) *Hydrologic reclamation plan.* The application shall include a plan, with maps and descriptions, indicating how the relevant requirements of Part 816, including §§ 816.41 to 816.43, will be met. The plan shall be specific to the local hydrologic conditions. It shall contain the steps to be taken during mining and reclamation through bond release to minimize disturbances to the hydrologic balance within the permit and adjacent areas; to prevent material damage outside the permit area; to meet applicable Federal and State water quality laws and regulations; and to protect the rights of present water users. The plan shall include the measures to be taken to: Avoid acid or toxic drainage; prevent, to the extent possible using the best technology currently available, additional contributions of suspended solids to streamflow; provide water-treatment facilities when needed; control drainage; restore approximate premining recharge capacity and protect or replace rights of present water users. The plan shall specifically address and potential adverse hydrologic consequences identified in the PHC determination prepared under paragraph (f) of this section and shall include preventive and remedial measures.

(i) *Ground-water monitoring plan.* (1) The application shall include a ground-water monitoring plan based upon the PHC determination required under paragraph (f) of this section and the analysis of all baseline hydrologic, geologic and other information in the permit application. The plan shall provide for the monitoring of parameters that relate to the suitability of the ground water for current and approved postmining land uses and to the objectives for protection of the hydrologic balance set forth in paragraph (h) of this section. It shall identify the quantity and quality parameters to be monitored, sampling frequency, and site locations. It shall describe how the data may be used to determine the impacts of the operation upon the hydrologic balance. At a minimum, total dissolved solids or specific conductance corrected to 25° C, pH, total iron, total manganese, and water levels shall be monitored and data submitted to the regulatory authority at least every 3 months for each monitoring location. The regulatory authority may require additional monitoring.

(2) If an applicant can demonstrate by the use of the PHC determination and other available information that a particular water-bearing stratum in the proposed permit and adjacent areas is not one which serves as an aq-

uifer which significantly ensures the hydrologic balance within the cumulative impact area, then monitoring of that stratum may be waived by the regulatory authority.

(j) *Surface-water monitoring plan.* (1) The application shall include a surface-water monitoring plan based upon the PHC determination required under paragraph (f) of this section and the analysis of all baseline hydrologic, geologic, and other information in the permit application. The plan shall provide for the monitoring of parameters that relate to the suitability of the surface water for current and approved postmined land uses and to the objectives for protection of the hydrologic balance as set forth in paragraph (h) of this section as well as the effluent limitations found at 40 CFR Part 434.

(2) The plan shall identify the surface-water quantity and quality parameters to be monitored, sampling frequency and site locations. It shall describe how the data may be used to determine the impacts of the operation upon the hydrologic balance.

(i) At all monitoring locations in the surface-water bodies such as streams, lakes, and impoundments, that are potentially impacted or into which water will be discharged and at upstream monitoring locations the total dissolved solids or specific conductance corrected to 25°C, total suspended solids, pH, total iron, total manganese, and flow shall be monitored.

(ii) For point-source discharges, monitoring shall be conducted in accordance with 40 CFR Parts 122, 123 and 434 and as required by the National Pollutant Discharge Elimination System permitting authority.

(3) The monitoring reports shall be submitted to the regulatory authority every 3 months. The regulatory authority may require additional monitoring.

[48 FR 43985, Sept. 26, 1983]

§ 780.22 Geologic information.

(a) *General.* Each application shall include geologic information in sufficient detail to assist in determining—

(1) The probable hydrologic consequences of the operation upon the quality and quantity of surface and ground water in the permit and adjacent areas, including the extent to which surface- and ground-water monitoring is necessary;

(2) All potentially acid- or toxic-forming strata down to and including the stratum immediately below the lowest coal seam to be mined; and

(3) Whether reclamation as required by this chapter can be accomplished and whether the proposed operation has been designed to prevent material damage to the hydrologic balance outside the permit area.

(b) Geologic information shall include, at a minimum the following:

(1) A description of the geology of the proposed permit and adjacent areas down to and including the deeper of either the stratum immediately below the lowest coal seam to be mined or any aquifer below the lowest coal seam to be mined which may be adversely impacted by mining. The description shall include the areal and structural geology of the permit and adjacent areas, and other parameters which influence the required reclamation and the occurrence, availability, movement, quantity, and quality of potentially impacted surface and ground waters. It shall be based on—

(i) The cross sections, maps and plans required by § 779.25 of this chapter;

(ii) The information obtained under paragraphs (b)(2) and (c) of this section; and

(iii) Geologic literature and practices.

(2) Analyses of samples collected from test borings; drill cores; or fresh, unweathered, uncontaminated samples from rock outcrops from the permit area, down to and including the deeper of either the stratum immediately below the lowest coal seam to be mined or any aquifer below the lowest seam to be mined which may be adversely impacted by mining. The analyses shall result in the following:

(i) Logs showing the lithologic characteristics including physical properties and thickness of each stratum and location of ground water where occurring;

(ii) Chemical analyses identifying those strata that may contain acid- or toxic-forming or alkalinity-producing materials and to determine their content except that the regulatory authority may find that the analysis for alkalinity-producing materials is unnecessary; and

(iii) Chemical analyses of the coal seam for acid- or toxic-forming materials, including the total sulfur and pyritic sulfur, except that the regulatory authority may find that the analysis of pyritic sulfur content is unnecessary.

(c) If determined to be necessary to protect the hydrologic balance or to meet the performance standards of this chapter, the regulatory authority may require the collection, analysis, and description of geologic information in addition to that required by paragraph (b) of this section.

(d) An applicant may request the regulatory authority to waive in whole or in part the requirements of paragraph (b)(2) of this section. The waiver may be granted only if the regulatory authority finds in writing that the collection and analysis of such data is unnecessary because other equivalent information is available to the regulatory authority in a satisfactory form.

[48 FR 43987, Sept. 26, 1983]

§ 780.23 Reclamation plan: Postmining land uses.

(a) Each plan shall contain a detailed description of the proposed use, following reclamation, of the land within the proposed permit area including a discussion of the utility and capacity of the reclaimed land to support a variety of alternative uses, and the relationship of the proposed use to existing land use policies and plans. This description shall explain—

(1) How the proposed postmining land use is to be achieved and the necessary support activities which may be needed to achieve the proposed land use;

(2) Where range or grazing is the proposed postmining use, the detailed management plans to be implemented;

(3) Where a land use different from the pre-mining land use is proposed, all materials needed for approval of the alternative use under 30 CFR 816.133; and

(4) The consideration which has been given to making all of the proposed surface mining activities consistent with surface owner plans and applicable State and local land use plans and programs.

(b) The description shall be accompanied by a copy of the comments concerning the proposed use by the legal or equitable owner of record of the surface of the proposed permit area and the State and local government agencies which would have to initiate, implement, approve, or authorize the proposed use of the land following reclamation.

§ 780.25 Reclamation plan: Ponds, impoundments, banks, dams, and embankments.

(a) *General.* Each application shall include a general plan for each proposed sedimentation pond, water impoundment, and coal processing waste bank, dam or embankment within the proposed permit area.

(1) Each general plan shall—

(i) Be prepared by, or under the direction of, and certified by a qualified, registered, professional engineer, a professional geologist, or in any State which authorizes land surveyors to prepare and certify such plans, a qualified, registered, professional, land surveyor, with assistance from experts in related fields such as landscape architecture;

(ii) Contain a description, map, and cross section of the structure and its location;

(iii) Contain preliminary hydrologic and geologic information required to assess the hydrologic impact of the structure;

(iv) Contain a survey describing the potential effect on the structure from subsidence of the subsurface strata resulting from past underground mining operations if underground mining has occurred; and

(v) Contain a certification statement which includes a schedule setting forth the dates that any detailed design plans for structures that are not submitted with the general plan will be submitted to the regulatory authority. The regulatory authority shall have approved, in writing, the detailed design plan for a structure before construction of the structure begins.

(2) Each detailed design plan for a structure that meets or exceeds the size or other criteria of the Mine Safety and Health Administration, § 77.216(a) of this title shall—

(i) Be prepared by, or under the direction of, and certified by a qualified registered professional engineer with assistance from experts in related fields such as geology, land surveying, and landscape architecture;

(ii) Include any geotechnical investigation, design, and construction requirements for the structure;

(iii) Describe the operation and maintenance requirements for each structure; and

(iv) Describe the timetable and plans to remove each structure, if appropriate.

(3) Each detailed design plan for a structure that does not meet the size or other criteria of § 77.216(a) of this title shall—

(i) Be prepared by, or under the direction of, and certified by a qualified, registered, professional engineer, or in any State which authorizes land surveyors to prepare and certify such plans, a qualified, registered, professional, land surveyor, except that all coal processing waste dams and embankments covered by §§ 816.81-816.84 of this chapter shall be certified by a qualified, registered, professional engineer;

(ii) Include any design and construction requirements for the structure, including any required geotechnical information;

(iii) Describe the operation and maintenance requirements for each structure; and

(iv) Describe the timetable and plans to remove each structure, if appropriate.

(b) *Sedimentation ponds.* Sedimentation ponds, whether temporary or permanent, shall be designed in compliance with the requirements of § 816.46 of this chapter. Any sedimentation pond or earthen structure which will remain on the proposed permit area as a permanent water impoundment shall also be designed to comply with the requirements of § 816.49 of this chapter. Each plan shall, at a minimum, comply with the requirements of the Mine Safety and Health Administration, §§ 77.216-1 and 77.216-2 of this title.

(c) *Permanent and temporary impoundments.* Permanent and temporary impoundments shall be designed to comply with the requirements of § 816.49 of this chapter. Each plan shall comply with the requirements of the Mine Safety and Health Administration, §§ 77.216-1 and 77.216-2.

(d) *Coal processing waste banks.* Coal processing waste banks shall be designed to comply with the requirements of 30 CFR 816.81—816.84.

(e) *Coal processing waste dams and embankments.* Coal processing waste dams and embankments shall be designed to comply with the requirements of 30 CFR 816.81—816.84. Each plan shall comply with the requirements of the Mine Safety and Health Administration, 30 CFR 77.216-1 and 77.216-2, and shall contain the results of a geotechnical investigation of the proposed dam or embankment foundation area, to determine the structural competence of the foundation which will support the proposed dam or embankment structure and the impounded material. The geotechnical investigation shall be planned and supervised by an engineer or engineering geologist, according to the following:

(1) The number, location, and depth of borings and test pits shall be determined using current prudent engineering practice for the size of the dam or embankment, quantity of material to be impounded, and subsurface conditions.

(2) The character of the overburden and bedrock, the proposed abutment sites, and any adverse geotechnical conditions which may affect the particular dam, embankment, or reservoir site shall be considered.

(3) All springs, seepage, and ground water flow observed or anticipated during wet periods in the area of the proposed dam or embankment shall be identified on each plan.

(4) Consideration shall be given to the possibility of mudflows, rock-debris falls, or other landslides into the dam, embankment, or impounded material.

(f) If the structure is 20 feet or higher or impounds more than 20 acre-feet, each plan under paragraphs (b), (c), and (e) of this section shall include a stability analysis of each structure. The stability analysis shall include, but not be limited to, strength parameters, pore pressures, and long-term seepage conditions. The plan shall also contain a description of each engineering design assumption and calculation with a discussion of each alternative considered in selecting the specific design parameters and construction methods.

[44 FR 15357, Mar. 13, 1979, as amended at 45 FR 51550, Aug. 4, 1980; 48 FR 44780, Sept. 30, 1983; 50 FR 16199, Apr. 24, 1985]

§ 780.27 Reclamation plan: Surface mining near underground mining.

For surface mining activities within the proposed permit area to be conducted within 500 feet of an underground mine, the application shall describe the measures to be used to comply with 30 CFR 816.79.

§ 780.29 Diversions.

Each application shall contain descriptions, including maps and cross sections, of stream channel diversions and other diversions to be constructed within the proposed permit area to achieve compliance with 30 CFR 816.43 of this chapter.

[44 FR 15357, Mar. 13, 1979, as amended at 48 FR 43987, Sept. 26, 1983]

§ 780.31 Protection of public parks and historic places.

For any public parks or historic places that may be adversely affected by the proposed operations, each plan shall describe the measures to be used to minimize or prevent these impacts and to obtain approval of the regulatory authority and other agencies as required in 30 CFR 761.12(f).

§ 780.33 Relocation or use of public roads.

Each application shall describe, with appropriate maps and cross-sections, the measures to be used to ensure that the interests of the public and landowners affected are protected if, under 30 CFR 761.12(d), the applicant seeks to have the regulatory authority approve—

(a) Conducting the proposed surface mining activities within 100 feet of the right-of-way line of any public road, except where mine access or haul roads join that right-of-way; or

(b) Relocating a public road.

§ 780.35 Disposal of excess spoil.

(a) Each application shall contain descriptions, including appropriate maps and cross section drawings, of the proposed disposal site and design of the spoil disposal structures according to 30 CFR 816.71—816.74. These plans shall describe the geotechnical investigation, design, construction, operation, maintenance, and removal, if appropriate, of the site and structures.

(b) Each application shall contain the results of a geotechnical investigation of the proposed disposal site, including the following:

(1) The character of bedrock and any adverse geologic conditions in the disposal area,

(2) A survey identifying all springs, seepage, and ground water flow observed or anticipated during wet periods in the area of the disposal site;

(3) A survey of the potential effects of subsidence of the subsurface strata due to past and future mining operations;

(4) A technical description of the rock materials to be utilized in the construction of those disposal structures containing rock chimmey cores or underlain by a rock drainage blanket; and

(5) A stability analysis including, but not limited to, strength parameters, pore pressures and long-term seepage conditions. These data shall be accompanied by a description of all engineering design assumptions and calculations and the alternatives considered in selecting the specific design specifications and methods.

(c) If, under 30 CFR 816.71(d), rock-toe buttresses or key-way cuts are required, the application shall include the following:

(1) The number, location, and depth of borings or test pits which shall be determined with respect to the size of

the spoil disposal structure and subsurface conditions; and

(2) Engineering specifications utilized to design the rock-toe buttress or key-way cuts which shall be determined in accordance with paragraph (b)(5) of this section.

[44 FR 15357, Mar. 13, 1979, as amended at 48 FR 44780, Sept. 30, 1983]

§ 780.37 Transportation facilities.

Each application shall contain a detailed description of each road, conveyor, or rail system to be constructed, used, or maintained within the proposed permit area. The description shall include a map, appropriate cross sections, and the following:

(a) Specifications for each road width, road gradient, road surface, road cut, fill embankment, culvert, bridge, drainage ditch, and drainage structure.

(b) A report of appropriate geotechnical analysis, where approval of the regulatory authority is required for alternative specifications, or for steep cut slopes under 30 CFR 816.150 and 816.151.

(c) A description of measures to be taken to obtain approval of the regulatory authority for alteration or relocation of a natural drainageway under 30 CFR 816.150 and 816.151.

(d) A description of measures, other than use of a rock headwall, to be taken to protect the inlet end of a ditch relief culvert, for approval by the regulatory authority under 30 CFR 816.150 and 816.151.

(e) Each plan shall contain a general description of each road, conveyor, or rail system to be constructed, used, or maintained within the proposed permit area.

[44 FR 15357, Mar. 13, 1979, as amended at 45 FR 51550, Aug. 4, 1980; 48 FR 44780, Sept. 30, 1983]

PART 783—UNDERGROUND MINING PERMIT APPLICATIONS—MINIMUM REQUIREMENTS FOR INFORMATION ON ENVIRONMENTAL RESOURCES

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AUTHORITY: Pub. L. 95-87, 91 Stat. 445 (30 U.S.C. 1201 *et seq.*) and sec. 115, Pub. L. 98-146, 97 Stat. 938 (30 U.S.C. 1257).

SOURCE: 44 FR 15363, Mar. 13, 1979, unless otherwise noted.

§ 783.1 Scope.

This part establishes the minimum requirements for the Secretary's approval of regulatory program provisions for the environmental resources contents of applications for permits for underground mining activities.

§ 783.2 Objectives.

The objectives of this part are to ensure that each application provides to the regulatory authority a complete and accurate description of the environmental resources that may be impacted or affected by proposed underground mining activities.

§ 783.4 Responsibilities.

(a) It is the responsibility of the applicant to provide, except where specifically exempted in this part, all information required by this part in the application.

(b) It is the responsibility of State and Federal Government agencies to provide information for applications as specifically required by this part.

§ 783.10 Information collection.

The information collection requirements contained in 30 CFR 783.11, 783.12, 783.13, 783.14, 783.15, 783.16, 783.17, 783.18, 783.19, 783.20, 783.21, 783.22, 783.23, 783.24 and 783.25 have been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned clearance number 1029-0038. The information is being collected to meet the requirements of sections 507 and 508 of Pub. L. 95-87, which require the permit applicant to present an adequate description of the existing pre-mining environmental resources within and around the proposed mine plan area. This information will be used by the regulatory authority to determine whether the applicant can comply with the performance standards for underground mining. The obligation to respond is mandatory.

[47 FR 33686, Aug. 4, 1982]

§ 783.11 General requirements.

Each permit application shall include a description of the existing, premining environmental resources within the proposed permit area and adjacent areas that may be affected or impacted by the proposed underground mining activities.

[44 FR 15363, Mar. 13, 1979, as amended at 45 FR 51550, Aug. 4, 1980]

§ 783.12 General environmental resources information.

Each application shall describe and identify—

(a) The lands subject to surface coal mining operations over the estimated life of those operations and the size, sequence, and timing of the subareas for which it is anticipated that individual permits for mining will be sought; and

(b) The nature of cultural and historic resources listed or eligible for listing on the National Register of Historic Places and known archeological sites within the proposed permit and adjacent areas. The description shall be based on all available information, including, but not limited to, data of State and local archeological, historic, and cultural preservation agencies.

[44 FR 15363, Mar. 13, 1979, as amended at 45 FR 51550, Aug. 4, 1980; 48 FR 14822, Apr. 5, 1983]

§ 783.18 Climatological information.

(a) When requested by the regulatory authority, the application shall contain a statement of the climatological factors that are representative of the proposed permit area, including—

(1) The average seasonal precipitation;

(2) The average direction and velocity of prevailing winds; and

(3) Seasonal temperature ranges.

(b) The regulatory authority may request such additional data as deemed necessary to ensure compliance with the requirements of this subchapter.

[44 FR 15363, Mar. 13, 1979, as amended at 45 FR 51550, Aug. 4, 1980]

§ 783.19 Vegetation information.

(a) The permit application shall, if required by the regulatory authority, contain a map that delineates existing vegetative types and a description of the plant communities within the area affected by surface operations and facilities and within any proposed reference area. This description shall include information adequate to predict the potential for reestablishing vegetation.

(b) When a map or aerial photograph is required, sufficient adjacent areas shall be included to allow evaluation of vegetation as important habitat for fish and wildlife for those species of fish and wildlife identified under 30 CFR 779.20.

§ 783.20 Fish and wildlife resources information.

(a) Each application shall include a study of fish and wildlife and their habitats within the proposed mine plan area where surface operations will be conducted or facilities located and the portions of the adjacent areas where effects on such resources may reasonably be expected to occur.

(b) Prior to initiating such studies, the applicant shall contact the regulatory authority to determine what fish and wildlife resources information will be required.

(c) The regulatory authority, in consultation with the appropriate State and Federal fish and wildlife management, conservation, or land management agencies having responsibilities for fish or wildlife or their habitats, shall determine the level of detail and the areas of such studies according to:

(1) Published data and other information,

(2) Site specific information obtained by the applicant, and

(3) Written guidance obtained from agencies consulted.

§ 783.21 Soil resources information.

(a) The applicant shall provide adequate soil survey information on those portions of the permit area to be affected by surface operations or facilities consisting of the following:

(1) A map delineating different soils;

(2) Soil identification;

(3) Soil description; and

(4) Present and potential productivity of existing soils.

(b) Where the applicant proposes to use selected overburden materials as a supplement or substitute for topsoil, the application shall provide results of the analyses, trials and tests required under 30 CFR 817.22.

Editorial Note: For a document suspending § 783.21 in part, see 45 FR 51548, Aug. 4, 1980.

§ 783.22 Land-use information.

(a) The application shall contain a statement of the condition, capability and productivity of the land which will be affected by surface operations and facilities within the proposed permit area, including—

(1) A map and supporting narrative of the uses of the land existing at the time of the filing of the application. If the premining use of the land was changed within 5 years before the anticipated date of beginning the proposed operations, the historic use of the land shall also be described.

(2) A narrative of land capability and productivity, which analyzes the land-use description under paragraph (a) of this section in conjunction with other environmental resources information required under this part. The narrative shall provide analyses of:

(i) The capability of the land before any mining to support a variety of uses, giving consideration to soil and foundation characteristics, topography, vegetative cover, and the hydrology of the area proposed to be affected by surface operations or facilities; and

(ii) The productivity of the area proposed to be affected by surface operations and facilities before mining, expressed as average yield of food, fiber, forage, or wood products from such lands obtained under high levels of management. The productivity shall be determined by yield data or estimates for similar sites based on current data from the U.S. Department of Agriculture, State agricultural universities or appropriate State natural resources or agricultural agencies.

(b) The application shall state whether the proposed permit area has been previously mined, and, if so, the following information, if available—

(1) The type of mining method used;

(2) The coal seams or other mineral strata mined;

(3) The extent of coal or other minerals removed;

(4) The approximate dates of past mining; and

(5) The uses of the land preceding mining.

(c) The application shall contain a description of the existing land uses and land use classifications under local law, if any, of the proposed permit and adjacent areas.

[44 FR 15363, Mar. 13, 1979, as amended at 45 FR 51550, Aug. 4, 1980]

§ 783.24 Maps: General requirements.

The permit application shall include maps showing:

(a) All boundaries of lands and names of present owners of record of those lands, both surface and sub-surface, included in or contiguous to the permit area;

(b) The boundaries of land within the proposed permit area upon which the applicant has the legal right to enter and begin underground mining activities;

(c) The boundaries of all areas proposed to be affected over the estimated total life of the underground mining activities, with a description of size, sequence and timing of the mining of sub-areas for which it is anticipated that additional permits will be sought;

(d) The location of all buildings in and within 1000 feet of the proposed permit area, with identification of the current use of the buildings;

(e) The location of surface and subsurface man-made features within, passing through, or passing over the proposed permit area, including, but not limited to, major electric transmission lines, pipelines, and agricultural drainage tile fields;

(f) The location and boundaries of any proposed reference areas for determining the success of revegetation;

(g) The locations of water supply intakes for current users of surface waters flowing into, out of, and within a hydrologic area defined by the regulatory authority, and those surface waters which will receive discharges from affected areas in the proposed permit area;

(h) Each public road located in or within 100 feet of the proposed permit area;

(i) The boundaries of any public park and locations of any cultural or historical resources listed or eligible for listing in the National Register of Historic Places and known archeological sites within the permit and adjacent areas.

(j) Each public or private cemetery, Indian burial ground, or other area where human bodies are interred, that is located in or within 100 feet of the proposed permit area;

(k) Any land within the proposed permit area which is within the boundaries of any units of the National System of Trails or the Wild and Scenic Rivers System, including study rivers designated under section 5(a) of the Wild and Scenic Rivers Act; and

(l) Other relevant information required by the regulatory authority.

[44 FR 15363, Mar. 13, 1979; 44 FR 49685, Aug. 24, 1979, as amended at 45 FR 51550, Aug. 4, 1980; 48 FR 14822, Apr. 5, 1983; 48 FR 41356, Sept. 14, 1983]

§ 783.25 Cross sections, maps, and plans.

(a) The application shall include cross sections, maps, and plans showing—

(1) Elevations and locations of test borings and core samplings;

(2) Elevations and locations of monitoring stations used to gather data on water quality and quantity, fish and wildlife, and air quality, if required, in preparation of the application.

(3) Nature, depth, and thickness of the coal seams to be mined, any coal or rider seams above the seam to be mined, each stratum of the overburden, and the stratum immediately below the lowest coal seam to be mined;

(4) All coal crop lines and the strike and dip of the coal to be mined within the proposed permit area;

(5) Location and extent of known workings of active, inactive, or abandoned underground mines, including mine openings to the surface within the proposed permit and adjacent areas;

(6) Location and extent of sub-surface water, if encountered, within the proposed permit or adjacent areas, including, but not limited to areal and vertical distribution of aquifers, and portrayal of seasonal differences of head in different aquifers on cross-sections and contour maps;

(7) Location of surface water bodies such as streams, lakes, ponds, springs, constructed or natural drains, and irrigation ditches within the proposed permit and adjacent areas;

(8) Location and extent of existing or previously surface-mined areas within the proposed permit area;

(9) Location and dimensions of existing areas of spoil, waste, coal development waste, and non-coal waste disposal, dams, embankments, other impoundments, and water treatment and air pollution control facilities within the proposed permit area;

(10) Location, and depth if available, of gas and oil wells within the proposed permit area and water wells in the permit area and adjacent areas;

(11) Sufficient slope measurements to adequately represent the existing land surface configuration of the area affected by surface operations and facilities, measured and recorded according to the following:

(i) Each measurement shall consist of an angle of inclination along the prevailing slope extending 100 linear feet above and below or beyond the coal outcrop or the area to be disturbed or, where this is impractical, at locations specified by the regulatory authority.

(ii) Where the area has been previously mined, the measurements shall extend at least 100 feet beyond the limits of mining disturbances, or any other distance determined by the regulatory authority to be representative of the premining configuration of the land.

(iii) Slope measurements shall take into account natural variations in slope, to provide accurate representation of the range of natural slopes and reflect geomorphic differences of the area to be disturbed.

(b) Cross-sections, maps and plans included in a permit application as required by this section shall be prepared by, or under the direction of, and certified by a qualified, registered, professional engineer, a professional geologist, or in any State which authorizes land surveyors to prepare and certify such cross sections, maps and plans, a qualified, registered, professional, land surveyor, with assistance from experts in related fields such as landscape architecture, and shall be updated as required by the regulatory authority.

[44 FR 15363, Mar. 13, 1979, as amended at 45 FR 51550, Aug. 4, 1980; 50 FR 16199, Apr. 24, 1985]

Editorial Note: For a document suspending § 783.25 (a)(3), (a)(8) and (a)(9) (previously § 783.25 (c), (h) and (i)), see 45 FR 51548, Aug. 4, 1980.

PART 784—UNDERGROUND MINING PERMIT APPLICATIONS—MINIMUM REQUIREMENTS FOR RECLAMATION AND OPERATION PLAN

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784.25 Return of coal processing waste to abandoned underground workings.
784.26 Air pollution control plan.
784.29 Diversions.
784.200 Interpretive rules related to General Performance Standards.

Authority: Pub. L. 95-87, 91 Stat. 445 (30 U.S.C. 1201 *et seq.*) and sec. 115, Pub. L. 98-146, 97 Stat. 938 (30 U.S.C. 1257).

Source: 44 FR 15366, Mar. 13, 1979, unless otherwise noted.

§ 784.1 Scope.

This part provides the minimum requirements for the Secretary's approval of regulatory program provisions for the mining operations and reclamation plans portions of applications for permits for underground mining activities, except to the extent that different requirements for those plans are established under 30 CFR Part 785.

§ 784.2 Objectives.

The objectives of this part are to ensure that the regulatory authority is provided with comprehensive and reliable information on proposed underground mining activities, and to ensure that those activities are allowed to be conducted only in compliance with the Act, this chapter, and the regulatory program.

§ 784.4 Responsibilities.

(a) It is the responsibility of the applicant to provide to the regulatory authority all of the information required by this part, except where specifically exempted in this part.

(b) It is the responsibility of State and Federal governmental agencies to provide information to the regulatory authority where specifically required in this part.

§ 784.10 Information collection.

The information collection requirements contained in 30 CFR 784.11, 784.12, 784.13, 784.14, 784.15, 784.16, 784.17, 784.18, 784.19, 784.20, 784.21, 784.23, 784.24, 784.25 and 784.26 have been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned clearance number 1029-0039. The information is being collected to meet the requirements of sections 507(b), 508(a) and 516(b) of Pub. L. 95-87, which require applicants for underground mine permits to provide a description of each existing structure proposed to be used in the mining or reclamation operation and a compliance plan for structures proposed to be modified or constructed for use in the operation. This information will be used by the regulatory authority in determining if the applicant can comply with the performance standards for underground mining. The obligation to respond is mandatory.

[47 FR 33686, Aug. 4, 1982]

§ 784.11 Operation plan: General requirements.

Each application shall contain a description of the mining operations proposed to be conducted during the life of the mine within the proposed permit area, including, at a minimum, the following:

(a) A narrative description of the type and method of coal mining procedures and proposed engineering techniques, anticipated annual and total production of coal, by tonnage, and the major equipment to be used for all aspects of those operations; and

(b) A narrative explaining the construction, modification, use, maintenance, and removal of the following facilities (unless retention of such facility is necessary for postmining land use as specified in § 817.133):

(1) Dams, embankments, and other impoundments;

(2) Overburden and topsoil handling and storage areas and structures;

(3) Coal removal, handling, storage, cleaning, and transportation areas and structures;

(4) Spoil, coal processing waste, mine development waste, and non-coal waste removal, handling, storage, transportation, and disposal areas and structures;

(5) Mine facilities; and

(6) Water pollution control facilities.

[44 FR 15366, Mar. 13, 1979, as amended at 45 FR 51550, Aug. 4, 1980]

§ 784.12 Operation plan: Existing structures.

(a) Each application shall contain a description of each existing structure proposed to be used in connection with or to facilitate the surface coal mining and reclamation operation. The description shall include:

(1) Location;

(2) Plans of the structure which describe its current condition;

(3) Approximate dates on which construction of the existing structure was begun and completed; and

(4) A showing, including relevant monitoring data or other evidence, whether the structure meets the performance standards of Subchapter K (Permanent Program Standards) of this chapter or, if the structure does not meet the performance standards of Subchapter K of this chapter, a showing whether the structure meets the performance standards of Subchapter B (Interim Program Standards) of this chapter.

(b) Each application shall contain a compliance plan for each existing structure proposed to be modified or reconstructed for use in connection with or to facilitate the surface coal mining and reclamation operation. The compliance plan shall include—

(1) Design specifications for the modification or reconstruction of the structure to meet the design and performance standards of Subchapter K of this chapter;

(2) A construction schedule which shows dates for beginning and completing interim steps and final reconstruction;

(3) Provisions for monitoring the structure during and after modification or reconstruction to ensure that the performance standards of Subchapter K of this chapter are met; and

(4) A showing that the risk of harm to the environment or to public health or safety is not significant during the period of modification or reconstruction.

§ 784.13 Reclamation plan: General requirements.

(a) Each application shall contain a plan for the reclamation of the lands within the proposed permit area, showing how the applicant will comply with sections 515 and 516 of the Act, Subchapter K of this chapter, and the environmental protection performance standards of the regulatory program. The plan shall include, at a minimum, all information required under 30 CFR 784.13 through 784.26.

(b) Each plan shall contain the following information for the proposed permit area;

(1) A detailed timetable for the completion of each major step in the reclamation plan;

(2) A detailed estimate of the cost of the reclamation of the proposed operations required to be covered by a performance bond under Subchapter J of this chapter, with supporting calculations for the estimates;

(3) A plan for backfilling, soil stabilization, compacting and grading, with contour maps or cross sections that show the anticipated final surface configuration of the proposed permit area, in accordance with 30 CFR 817.102 through 817.107;

(4) A plan for removal, storage, and redistribution of topsoil, subsoil, and other material to meet the requirements of § 817.22 of this chapter. A demonstration of the suitability of topsoil substitutes or supplements under § 817.22(b) of this chapter shall be based upon analysis of the thickness of soil horizons, total depth, texture, percent coarse fragments, pH, and areal extent of the different kinds of soils. The regulatory authority may require other chemical and physical analyses, field-site trials, or greenhouse tests if determined to be necessary or desirable to demonstrate the suitability of the topsoil substitutes or supplements.

(5) A plan for revegetation as required in 30 CFR 817.111 through 817.116, including, but not limited to, descriptions of the—

(i) Schedule of revegetation;

(ii) Species and amounts per acre of seeds and seedlings to be used;

(iii) Methods to be used in planting and seeding;

(iv) Mulching techniques;

(v) Irrigation, if appropriate, and pest and disease control measures, if any;

(vi) Measures proposed to be used to determine the success of revegetation as required in 30 CFR 817.116; and,

(vii) A soil testing plan for evaluation of the results of topsoil handling and reclamation procedures related to revegetation.

(6) A description of the measures to be used to maximize the use and conservation of the coal resource as required in 30 CFR 817.59;

(7) A description of measures to be employed to ensure that all debris, acid-forming and toxic-forming materials, and materials constituting a fire hazard are disposed of in accordance with 30 CFR 817.89 and 817.102 and a description of the contingency plans which have been developed to preclude sustained combustion of such materials;

(8) A description, including appropriate cross sections and maps, of the measures to be used to seal or manage mine openings, and to plug, case or manage exploration holes, other bore holes, wells and other openings within the proposed permit area, in accordance with 30 CFR 817.13--817.15; and

(9) A description of steps to be taken to comply with the requirements of the Clean Air Act (42 U.S.C. 7401 et seq.), the Clean Water Act (33 U.S.C. 1251 *et seq.*), and other applicable air and water quality laws and regulations and health and safety standards.

[44 FR 15366, Mar. 13, 1979; 44 FR 49686, Aug. 24, 1979, as amended at 48 FR 22100, May 16, 1983; 48 FR 44780, Sept. 30, 1983]

§ 784.14 Hydrologic information.

(a) *Sampling and analysis.* All water quality analyses performed to meet the requirements of this section shall be conducted according to the methodology in the 15th edition of "Standard Methods for the Examination of Water and Wastewater," which is incorporated by reference, or the methodology in 40 CFR Parts 136 and 434. Water quality sampling performed to meet the requirements of this section shall be conducted according to either methodology listed above when feasible. "Standard Methods for the Examination of Water and Wastewater," is a joint publication of the American Public Health Association, the American Water Works Association, and the Water Pollution Control Federation and is available from the American Public Health Association, 1015 Fifteenth Street, NW., Washington, DC 20036. This document is also available for inspection at the Office of the Federal Register Information Center, Room 8301, 1100 L Street, NW., Washington, D.C.; at the Office of the OSM Administrative Record, U.S. Department of the Interior, Room 5315, 1100 L Street, NW., Washington, D.C.; at the OSM Eastern Technical Service Center, U.S. Department of the Interior, Building 10, Parkway Center, Pittsburgh, Pa.; and at the OSM Western Technical Service Center, U.S. Department of the Interior, Brooks Tower, 1020 15th Street, Denver, Colo. This incorporation by reference was approved by the Director of the Federal Register on October 26, 1983. This document is incorporated as it exists on the date of the approval, and a notice of any change in it will be published in the FEDERAL REGISTER.

(b) *Baseline information.* The application shall include the following baseline hydrologic information, and any additional information required by the regulatory authority.

(1) *Ground-water information.* The location and ownership for the permit and adjacent areas of existing wells, springs, and other ground-water resources, seasonal quality and quantity of ground water, and usage. Water quality descriptions shall include, at a minimum, total dissolved solids or specific conductance corrected to 25°C, pH, total iron, and total manganese. Ground-water quantity descriptions shall include, at a minimum, approximate rates of discharge or usage and depth to the water in the coal seam, and each water-bearing stratum above and potentially impacted stratum below the coal seam.

(2) *Surface-water information.* The name, location, ownership and description of all surface-water bodies such as streams, lakes, and impoundments, the location of any discharge into any surface-water body in the proposed permit and adjacent areas, and information on surface-water quality and quantity sufficient to demonstrate seasonal variation and water usage. Water quality descriptions shall include, at a minimum, baseline information on total suspended solids, total dissolved solids or specific conductance corrected to 25°C, pH, total iron, and total manganese. Baseline acidity and alkalinity information shall be provided if there is a potential for acid drainage from the proposed mining operation. Water quantity descriptions shall include, at a minimum, baseline information on seasonal flow rates.

(3) *Supplemental information.* If the determination of the probable hydrologic consequences (PHC) required by paragraph (e) of this section indicates that adverse impacts on or off the proposed permit area may occur to the hydrologic balance, or that acid-forming or toxic-forming material is present that may result in the contamination of ground-water or surface-water supplies, then information supplemental to that required under paragraphs (b) (1) and (2) of this section shall be provided to evaluate such probable hydrologic consequences and to plan remedial and reclamation activities. Such supplemental information may be based upon drilling, aquifer tests, hydrogeologic analysis of the water-bearing strata, flood flows, or analysis of other water quality or quantity characteristics.

(c) *Baseline cumulative impact area information.* (1) Hydrologic and geologic information for the cumulative impact area necessary to assess the probable cumulative hydrologic impacts of the proposed operation and all anticipated mining on surface- and ground-water systems as required by paragraph (f) of this section shall be provided to the regulatory authority if available from appropriate Federal or State agencies.

(2) If this information is not available from such agencies, then the applicant may gather and submit this information to the regulatory authority as part of the permit application.

(3) The permit shall not be approved until the necessary hydrologic and geologic information is available to the regulatory authority.

(d) *Modeling.* The use of modeling techniques, interpolation or statistical techniques may be included as part of the permit application, but actual surface- and ground-water information may be required by the regulatory authority for each site even when such techniques are used.

(e) *Probable hydrologic consequences determination.* (1) The application shall contain a determination of the probable hydrologic consequences (PHC) of the proposed operation upon the quality and quantity of surface and ground water under seasonal flow conditions for the proposed permit and adjacent areas.

(2) The PHC determination shall be based on baseline hydrologic, geologic and other information collected for the permit application and may include data statistically representative of the site.

(3) The PHC determination shall include findings on:

(i) Whether adverse impacts may occur to the hydrologic balance;

(ii) Whether acid-forming or toxic-forming materials are present that could result in the contamination of surface- or ground-water supplies; and

(iii) What impact the proposed operation will have on:

(A) Sediment yield from the disturbed area; (B) acidity, total suspended and dissolved solids, and other important water quality parameters of local impact; (C) flooding or streamflow alteration; (D) ground-water and surface-water availability; and, (E) other characteristics as required by the regulatory authority.

(4) An application for a permit revision shall be reviewed by the regulatory authority to determine whether a new or updated PHC determination shall be required.

(f) *Cumulative hydrologic impact assessment.* (1) The regulatory authority shall provide an assessment of the probable cumulative hydrologic impacts (CHIA) of the proposed operation and all anticipated mining upon surface- and ground-water systems in the cumulative impact area. The CHIA shall be sufficient to determine, for purposes of permit approval, whether the proposed operation has been designed to prevent material damage to the hydrologic balance outside the permit area. The regulatory authority may allow the applicant to submit data and analyses relevant to the CHIA with the permit application.

(2) An application for a permit revision shall be reviewed by the regulatory authority to determine whether a new or updated CHIA shall be required.

(g) *Hydrologic reclamation plan.* The application shall include a plan, with maps and descriptions, indicating how the relevant requirements of Part 817, including §§ 817.41 to 817.43, will be met. The plan shall be specific to the local hydrologic conditions. It shall contain the steps to be taken during mining and reclamation through bond release to minimize disturbance to the hydrologic balance within the permit and adjacent areas; to prevent material damage outside the permit area; and to meet applicable Federal and State water quality laws and regulations. The plan shall include the measures to be taken to: avoid acid or toxic drainage; prevent to the extent possible using the best technology currently available, additional contributions of suspended solids to streamflow; provide water-treatment facilities when needed; control drainage; and restore approximate premining recharge capacity. The plan shall specifically address any potential adverse hydrologic consequences identified in the PHC determination prepared under paragraph (e) of this section and shall include preventive and remedial measures.

(h) *Ground-water monitoring plan.* (1) The application shall include a ground-water monitoring plan based upon the PHC determination required under paragraph (e) of this section and the analysis of all baseline hydrologic, geologic and other information in the permit application. The plan shall provide for the monitoring of parameters that relate to the suitability of the ground water for current and approved postmining land uses and to the objectives for protection of the hydrologic balance set forth in paragraph (g) of this section. It shall identify the quantity and quality parameters to be monitored, sampling frequency and site locations. It shall describe how the data may be used to determine the impacts of the operation upon the hydrologic balance. At a minimum, total dissolved solids or specific conductance corrected to 25°C, pH, total iron, total manganese, and water levels shall be monitored and data submitted to the regulatory authority at least every 3 months for each monitoring location. The regulatory authority may require additional monitoring.

(2) If an applicant can demonstrate by the use of the PHC determination and other available information that a particular water-bearing stratum in the proposed permit and adjacent areas is not one which serves as an aquifer which significantly ensures the hydrologic balance within the cumulative impact area, then monitoring of that stratum may be waived by the regulatory authority.

(i) *Surface-water monitoring plan.* (1) The application shall include a surface-water monitoring plan based upon the PHC determination required under paragraph (e) of this section and the analysis of all baseline hydrologic, geologic and other information in the permit application. The plan shall provide for the monitoring of parameters that relate to the suitability of the surface water for current and approved postmining land uses and to the objectives for protection of the hydrologic balance as set forth in paragraph (g) of this section as well as the effluent limitations found at 40 CFR Part 434.

(2) The plan shall identify the surface-water quantity and quality parameters to be monitored, sampling frequency and site locations. It shall describe how the data may be used to determine the impacts of the operation upon the hydrologic balance.

(i) At all monitoring locations in streams, lakes, and impoundments, that are potentially impacted or into which water will be discharged and at upstream monitoring locations, the total dissolved solids or specific conductance corrected at 25°C, total suspended solids, pH, total iron, total manganese, and flow shall be monitored.

(ii) For point-source discharges, monitoring shall be conducted in accordance with 40 CFR Parts 122, 123 and 434 and as required by the National Pollutant Discharge Elimination System permitting authority.

(3) The monitoring reports shall be submitted to the regulatory authority every 3 months. The regulatory authority may require additional monitoring.

[48 FR 43987, Sept. 26, 1983]

§ 784.15 Reclamation plan: Postmining land uses.

(a) Each plan shall contain a detailed description of the proposed use, following reclamation, of the land to be affected within the proposed permit area by surface operations or facilities, including a discussion of the utility and capacity of the reclaimed land to support a variety of alternative uses, and the relationship of the proposed use to existing land use policies and plans. This description shall explain—

(1) How the proposed postmining land use is to be achieved and the necessary support activities which may be needed to achieve the proposed land use;

(2) Where a land use different from the pre-mining land use is proposed, all materials needed for approval of the alternative use under 30 CFR 817.133; and

(3) The consideration given to making all of the proposed underground mining activities consistent with surface owner plans and applicable State and local land use plans and programs.

(b) The description shall be accompanied by a copy of the comments concerning the proposed use from the legal or equitable owner of record of the surface areas to be affected by surface operations or facilities within the proposed permit area and the State and local government agencies which would have to initiate, implement, approve, or authorize the proposed use of the land following reclamation.

§ 784.16 Reclamation plan: Ponds, impoundments, banks, dams and embankments.

(a) *General.* Each application shall include a general plan for each proposed sedimentation pond, water impoundment, and coal processing waste bank, dam or embankment within the proposed permit area.

(1) Each general plan shall—

(i) Be prepared by, or under the direction of, and certified by a qualified, registered, professional engineer, a professional geologist, or in any State which authorizes land surveyors to prepare and certify such plans, a qualified, registered, professional, land surveyor with assistance from experts in related fields such as landscape architecture;

(ii) Contain a description, map, and cross section of the structure and its location;

(iii) Contain preliminary hydrologic and geologic information required to assess the hydrologic impact of the structure;

(iv) Contain a survey describing the potential effect on the structure from subsidence of the subsurface strata resulting from past underground mining operations if underground mining has occurred; and

(v) Contain a certification statement which includes a schedule setting forth the dates when any detailed design plans for structures that are not submitted with the general plan will be submitted to the regulatory authority. The regulatory authority shall have approved, in writing, the detailed design plan for a structure before construction of the structure begins.

(2) Each detailed design plan for a structure that meets or exceeds the size or other criteria of the Mine Safety and Health Administration, 30 CFR 77.216(a) shall—

(i) Be prepared by, or under the direction of, and certified by a qualified registered professional engineer with assistance from experts in related fields such as geology, land surveying, and landscape architecture;

(ii) Include any geotechnical investigation, design, and construction requirements for the structure;

(iii) Describe the operation and maintenance requirements for each structure; and

(iv) Describe the timetable and plans to remove each structure, if appropriate.

(3) Each detailed design plan for a structure that does not meet the size or other criteria of § 77.216(a) of this title shall—

(i) Be prepared by, or under the direction of, and certified by a qualified, registered, professional engineer, or in any State which authorizes land surveyors to prepare and certify such plans, a qualified, registered, professional, land surveyor, except that all coal processing waste dams and embankments covered by §§ 817.81 through 817.84 of this chapter shall be certified by a qualified, registered, professional engineer;

(ii) Include any design and construction requirements for the structure, including any required geotechnical information;

(iii) Describe the operation and maintenance requirements for each structure; and

(iv) Describe the timetable and plans to remove each structure, if appropriate.

(b) *Sedimentation ponds.* (1) Sedimentation ponds, whether temporary or permanent, shall be designed in compliance with the requirements of 30 CFR 817.46. Any sedimentation pond or earthen structure which will remain on the proposed permit area as a permanent water impoundment shall also be designed to comply with the requirements of 30 CFR 817.49.

(2) Each plan shall, at a minimum, comply with the requirements of the Mine Safety and Health Administration, 30 CFR 77.216-1 and 77.216-2.

(c) *Permanent and temporary impoundments.* Permanent and temporary impoundments shall be designed to comply with the requirements of 30 CFR 817.49. Each plan shall comply with the requirements of the Mine Safety and Health Administration, 30 CFR 77.216-1 and 77.216-2.

(d) *Coal processing waste banks.* Coal processing waste banks shall be designed to comply with the requirements of 30 CFR 817.81 through 817.84.

(e) *Coal processing waste dams and embankments.* Coal processing waste dams and embankments shall be designed to comply with the requirements of 30 CFR 817.81 through 817.84. Each plan shall comply with the requirements of the Mine Safety and Health Administration, 30 CFR

77.216-1 and 77.216-2, and shall contain the results of a geotechnical investigation of the proposed dam or embankment foundation area, to determine the structural competence of the foundation which will support the proposed dam or embankment structure and the impounded material. The geotechnical investigation shall be planned and supervised by an engineer or engineering geologist, according to the following:

(1) The number, location, and depth of borings and test pits shall be determined using current prudent engineering practice for the size of the dam or embankment, quantity of material to be impounded, and subsurface conditions.

(2) The character of the overburden and bedrock, the proposed abutment sites, and any adverse geotechnical conditions which may affect the particular dam, embankment, or reservoir site shall be considered.

(3) All springs, seepage, and ground water flow observed or anticipated during wet periods in the area of the proposed dam or embankment shall be identified on each plan.

(4) Consideration shall be given to the possibility of mudflows, rock-debris falls, or other landslides into the dam, embankment, or impounded material.

(f) If the structure is 20 feet or higher or impounds more than 20 acre-feet, each plan under paragraphs (b), (c), and (e) of this section shall include a stability analysis of each structure. The stability analysis shall include, but not be limited to, strength parameters, pore pressures, and long-term seepage conditions. The plan shall also contain a description of each engineering design assumption and calculation with a discussion of each alternative considered in selecting the specific design parameters and construction methods.

[44 FR 15366, Mar. 13, 1979, as amended at 45 FR 51550, Aug. 4, 1980; 48 FR 44780, Sept. 30, 1983; 50 FR 16199, Apr. 24, 1985]

§ 784.17 Protection of public parks and historic places.

For any public parks or historic places that may be adversely affected by the proposed operation, each plan shall describe the measures to be used to minimize or prevent these impacts and to obtain approval of the regulatory authority and other agencies as required in 30 CFR 761.12(f).

§ 784.18 Relocation or use of public roads.

Each application shall describe, with appropriate maps and cross sections, the measures to be used to ensure that the interests of the public and landowners affected are protected if, under 30 CFR 761.12(d), the applicant seeks to have the regulatory authority approve—

(a) Conducting the proposed underground mining activities within 100 feet of the right-of-way line of any public road, except where mine access or haul roads join that right-of-way; or

(b) Relocating a public road.

§ 784.19 Underground development waste.

Each plan shall contain descriptions, including appropriate maps and cross-section drawings of the proposed disposal methods and sites for placing underground development waste and excess spoil generated at surface areas affected by surface operations and facilities, according to 30 CFR 817.71 through 817.74. Each plan shall describe the geotechnical investigation, design, construction, operation, maintenance and removal, if appropriate, of the structures and be prepared according to 30 CFR 780.35.

§ 784.20 Subsidence control plan.

The permit application shall include a survey which shall show whether structures or renewable resource lands exist within the proposed permit area and adjacent area and whether subsidence, if it occurred, could cause material damage or diminution of reasonably foreseeable use of such structures or renewable resource lands. If the survey shows that no such structures or renewable resource lands exist, or no such material damage or diminution could be caused in the event of mine subsidence, and if the regulatory authority agrees with such conclusion, no further information need be provided in the application under this section. In the event the survey shows that such structures or renewable resource lands exist, or that subsidence could cause material damage or diminution of value or foreseeable use of the land, or if the regulatory authority determines that such damage or diminution could occur, the application shall include a subsidence control plan which shall contain the following information:

(a) A description of the method of coal removal, such as longwall mining, room-and-pillar removal, hydraulic mining, or other extraction methods, including the size, sequence, and timing for the development of underground workings.

(b) A map of underground workings which describes the location and extent of areas in which planned-subsidence mining methods will be used and which includes all areas where the measures described in paragraph (d) of this section will be taken to prevent or minimize subsidence and subsidence-related damage.

(c) A description of the physical conditions, such as depth of cover, seam thickness, and lithology, which affect the likelihood or extent of subsidence and subsidence-related damage.

(d) Except for those areas where planned subsidence is projected to be used, a detailed description of the subsidence control measures that will be taken to prevent or minimize subsidence and subsidence-related damage, including, but not limited to—

(1) Backstowing or backfilling of voids;

(2) Leaving support pillars of coal;

(3) Leaving areas in which no coal is removed, including a description of the overlying area to be protected by leaving the coal in place;

(4) Taking measures on the surface to prevent material damage or lessening of the value or reasonably foreseeable use of the surface; and

(5) Monitoring, if any, to determine the commencement and degree of subsidence so that other appropriate measures can be taken to prevent or reduce material damage.

(e) A description of the anticipated effects of planned subsidence, if any.

(f) A description of the measures to be taken in accordance with § 817.121(c) of this chapter to mitigate or remedy any subsidence-related material damage to, or diminution in value or reasonably foreseeable use of—

(1) The land, or

(2) Structures or facilities to the extent required under State law.

(g) Other information specified by the regulatory authority as necessary to demonstrate that the operation will be conducted in accordance with the performance standards of § 817.121 of this chapter for subsidence control.

[48 FR 24650, June 1, 1983, as amended at 48 FR 44780, Sept. 30, 1983]

§ 784.21 Fish and wildlife plan.

(a) Each application shall contain a fish and wildlife plan, consistent with the performance standards of 30 CFR 817.97 and which provides:

(1) A statement of how the plan will minimize disturbances and adverse impacts on fish and wildlife and related environmental values during surface coal mining and reclamation operations, and how enhancement of these resources will be achieved, where practicable. The plan shall cover the portions of the mine plan area and adjacent areas as determined by the regulatory authority pursuant to § 783.20.

(2) If the applicant states that it will not be practicable, in accordance with paragraph (a)(1) of this section, to achieve a condition which clearly shows a trend toward enhancement of fish and wildlife resources at the time revegetation has been successfully completed under §§ 817.111—817.116, a statement shall be provided which establishes, to the satisfaction of the regulatory authority, why it is not practicable to achieve such a condition.

(b) A statement explaining how the applicant will utilize impact control measures, management techniques, and monitoring methods to protect or enhance the following, if they are to be affected by the proposed activities:

(1) Threatened or endangered species of plants or animals listed by the Secretary under the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.* and their critical habitats);

(2) Species such as eagles, migratory birds or other animals protected by State or Federal law, and their habi-

tats; or other species identified through the consultation process pursuant to § 783.20; or

(3) Habitats of unusually high value for fish and wildlife, such as wetlands, riparian areas, cliffs supporting raptors, areas offering special shelter or protection, reproduction and nursery areas, and wintering areas.

[44 FR 15366, Mar. 13, 1979, as amended at 48 FR 44780, Sept. 30, 1983]

§ 784.22 Geologic information.

(a) *General.* Each application shall include geologic information in sufficient detail to assist in—

(1) Determining the probable hydrologic consequences of the operation upon the quality and quantity of surface and ground water in the permit and adjacent areas, including the extent to which surface- and ground-water monitoring is necessary;

(2) Determining all potentially acid- or toxic-forming strata down to and including the stratum immediately below the coal seam to be mined;

(3) Determining whether reclamation as required by this chapter can be accomplished and whether the proposed operation has been designed to prevent material damage to the hydrologic balance outside the permit area; and

(4) Preparing the subsidence control plan under § 784.20.

(b) Geologic information shall include, at a minimum, the following:

(1) A description of the geology of the proposed permit and adjacent areas down to and including the deeper of either the stratum immediately below the lowest coal seam to be mined or any aquifer below the lowest coal seam to be mined which may be adversely impacted by mining. This description shall include the areal and structural geology of the permit and adjacent areas, and other parameters which influence the required reclamation and it shall also show how the areal and structural geology may affect the occurrence, availability, movement, quantity and quality of potentially impacted surface and ground water. It shall be based on—

(i) The cross sections, maps, and plans required by § 783.25 of this chapter;

(ii) The information obtained under paragraphs (b)(2), (b)(3), and (c) of this section; and

(iii) Geologic literature and practices.

(2) For any portion of a permit area in which the strata down to the coal seam to be mined will be removed or are already exposed, samples shall be collected and analyzed from test borings; drill cores; or fresh, unweathered, uncontaminated samples from rock outcrops down to and including the deeper of either the stratum immediately below the lowest coal seam to be mined or any aquifer below the lowest coal seam to be mined which may be adversely impacted by mining. The analyses shall result in the following:

(i) Logs showing the lithologic characteristics including physical properties and thickness of each stratum and location of ground water where occurring;

(ii) Chemical analyses identifying those strata that may contain acid- or toxic-forming, or alkalinity-producing materials and to determine their content except that the regulatory authority may find that the analysis for alkalinity-producing material is unnecessary; and

(iii) Chemical analysis of the coal seam for acid- or toxic-forming materials, including the total sulfur and pyritic sulfur, except that the regulatory authority may find that the analysis of pyritic sulfur content is unnecessary.

(3) For lands within the permit and adjacent areas where the strata above the coal seam to be mined will not be removed, samples shall be collected and analyzed from test borings or drill cores to provide the following data:

(i) Logs of drill holes showing the lithologic characteristics, including physical properties and thickness of each stratum that may be impacted, and location of ground water where occurring;

(ii) Chemical analyses for acid- or toxic-forming or alkalinity-producing materials and their content in the strata immediately above and below the coal seam to be mined;

(iii) Chemical analyses of the coal seam for acid- or toxic-forming materials, including the total sulfur and pyritic sulfur, except that the regulatory authority may find that the analysis of pyrite sulfur content is unnecessary; and

(iv) For standard room and pillar mining operations, the thickness and engineering properties of clays or soft rock such as clay shale, if any, in the stratum immediately above and below each coal seam to be mined.

(c) If determined to be necessary to protect the hydrologic balance, to minimize or prevent subsidence, or to meet the performance standards of this chapter, the regulatory authority may require the collection, analysis and description of geologic information in addition to that required by paragraph (b) of this section.

(d) An applicant may request the regulatory authority to waive in whole or in part the requirements of paragraphs (b) (2) and (3) of this section. The waiver may be granted only if the regulatory authority finds in writing that the collection and analysis of such data is unnecessary because other information having equal value or effect is available to the regulatory authority in a satisfactory form.

[48 FR 43989, Sept. 26, 1983]

§ 784.23 Operation plan: Maps and plans.

Each application shall contain maps and plans as follows:

(a) The maps, plans and cross-sections shall show the underground mining activities to be conducted, the lands to be affected throughout the operation, and any change in a facility or feature to be caused by the proposed operations, if the facility or feature was shown under 30 CFR 783.24 and 783.25.

(b) The following shall be shown for the proposed permit area:

(1) Buildings, utility corridors, and facilities to be used;

(2) The area of land to be affected within the proposed permit area, according to the sequence of mining and reclamation;

(3) Each area of land for which a performance bond or other equivalent guarantee will be posted under Subchapter J of this chapter;

(4) Each coal storage, cleaning and loading area;

(5) Each topsoil, spoil, coal preparation waste, underground development waste, and non-coal waste storage area;

(6) Each water diversion, collection, conveyance, treatment, storage and discharge facility to be used;

(7) Each source of waste and each waste disposal facility relating to coal processing or pollution control;

(8) Each facility to be used to protect and enhance fish and wildlife related environmental values;

(9) Each explosive storage and handling facility;

(10) Location of each sedimentation pond, permanent water impoundment, coal processing waste bank, and coal processing waste dam and embankment, in accordance with 30 CFR 784.16 and disposal areas for underground development waste and excess spoil, in accordance with 30 CFR 784.19;

(11) Each profile, at cross-sections specified by the regulatory authority, of the anticipated final surface configuration to be achieved for the affected areas;

(12) Location of each water and subsidence monitoring point;

(13) Location of each facility that will remain on the proposed permit area as a permanent feature, after the completion of underground mining activities.

(c) Except as provided in §§ 784.16(a)(2), 784.16(a)(3), 784.19, 817.71(b), 817.73(c) and 817.81(c) of this chapter, cross sections, maps and plans required under paragraphs (b)(4), (5), (6), (10) and (11) of this section shall be prepared by, or under the direction of, and certified by a qualified, registered, professional engineer, a professional geologist, or in any State which authorizes land surveyors to prepare and certify such cross sections, maps and plans, a qualified, registered, professional, land surveyor, with assistance from experts in related fields such as landscape architecture.

[44 FR 15366, Mar. 13, 1979; 44 FR 49686, Aug. 24, 1979, as amended at 45 FR 51550, Aug. 4, 1980; 48 FR 14822, Apr. 5, 1983; 50 FR 16199, Apr. 24, 1985]

§ 784.24 Transportation facilities.

Each application shall contain a detailed description of each road, conveyor, and rail system to be constructed, used, or maintained within the proposed permit area. The description shall include a map, appropriate cross sections, and the following:

(a) Specifications for each road width, road gradient, road surface, road cut, fill embankment, culvert, bridge, drainage ditch, and drainage structure.

(b) A report of appropriate geotechnical analysis, where approval of the regulatory authority is required for alternative specifications or for steep cut slopes under 30 CFR 817.150 and 817.151.

(c) A description of each measure to be taken to obtain approval of the regulatory authority for alteration or relocation of a natural drainageway under 30 CFR 817.150 and 817.151.

(d) A description of measures, other than use of a rock headwall, to be taken to protect the inlet end of a ditch relief culvert, for approval by the regulatory authority under 30 CFR 817.150 and 817.151.

(e) Each plan shall contain a general description of each road, conveyor, or rail system to be constructed, used, or maintained within the proposed permit area.

[44 FR 15366, Mar. 13, 1979, as amended at 45 FR 51550, Aug. 4, 1980; 48 FR 44780, Sept. 30, 1983]

§ 784.25 Return of coal processing waste to abandoned underground workings.

(a) Each plan shall describe the design, operation and maintenance of any proposed coal processing waste disposal facility, including flow diagrams and any other necessary drawings and maps, for the approval of the regulatory authority and the Mine Safety and Health Administration under 30 CFR 817.81(f).

(b) Each plan shall describe the source and quality of waste to be stowed, area to be backfilled, percent of the mine void to be filled, method of constructing underground retaining walls, influence of the backfilling operation on active underground mine operations, surface area to be supported by the backfill, and the anticipated occurrence of surface effects following backfilling.

(c) The applicant shall describe the source of the hydraulic transport mediums, method of dewatering the placed backfill, retainment of water underground, treatment of water if released to surface streams, and the effect on the hydrologic regime.

(d) The plan shall describe each permanent monitoring well to be located in the backfilled area, the stratum underlying the mined coal, and gradient from the backfilled area.

(e) The requirements of paragraphs (a), (b), (c), and (d) of this section shall also apply to pneumatic backfilling operations, except where the operations are exempted by the regulatory authority from requirements specifying hydrologic monitoring.

[44 FR 15366, Mar. 13, 1979, as amended at 48 FR 44780, Sept. 30, 1983]

§ 784.26 Air pollution control plan.

For all surface operations associated with underground mining activities, the application shall contain an air pollution control plan which includes the following:

(a) An air quality monitoring program, if required by the regulatory authority, to provide sufficient data to evaluate the effectiveness of the fugitive dust control practices, under paragraph (b) of this section to comply with applicable Federal and State air quality standards; and

(b) A plan for fugitive dust control practices, as required under 30 CFR 817.95.

§ 784.29 Diversions.

Each application shall contain descriptions, including maps and cross sections, of stream channel diversions and other diversions to be constructed within the proposed permit area to achieve compliance with § 817.43 of this chapter.

[44 FR 15366, Mar. 13, 1979. Redesignated and amended at 48 FR 43989, Sept. 26, 1983]

§ 784.200 Interpretive rules related to General Performance Standards.

The following interpretation of rules promulgated in Part 784 of this chapter have been adopted by the Office of

Surface Mining Reclamation and Enforcement.

(a) *Interpretation of § 784.15: Reclamation plan: Postmining land uses.* (1) The requirements of § 784.15(a)(2), for approval of an alternative postmining land use, may be met by requesting approval through the permit revision procedures of § 774.13 rather than requesting such approval in the original permit application. The original permit application, however, must demonstrate that the land will be returned to its premining land use capability as required by § 817.133(a). An application for a permit revision of this type, (i) must be submitted in accordance with the filing deadlines of § 774.13, (ii) shall constitute a significant alteration from the mining operations contemplated by the original permit, and (iii) shall be subject to the requirements of 30 CFR Parts 773 and 775.

[45 FR 64908, Oct. 1, 1980, as amended at 48 FR 44780, Sept. 30, 1983]

PART 785—REQUIREMENTS FOR PERMITS FOR SPECIAL CATEGORIES OF MINING

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AUTHORITY: Secs. 102, 201, 501(b), 503, 504, 506, 507, 508, 509, 510, 511, 513, 514, 515, 516, 517, 519, 527, 529, 701, and 711, Pub. L. 95-87, 91 Stat. 445 (30 U.S.C. 1202, 1211, 1251, 1253, 1254, 1256, 1257, 1258, 1259, 1260, 1261, 1263, 1264, 1265, 1266, 1267, 1269, 1277, 1279, 1291, 1301).

SOURCE: 44 FR 15370, Mar. 13, 1979, unless otherwise noted.

§ 785.1 Scope.

This part establishes the minimum requirements for regulatory program provisions for permits for certain categories of surface coal mining and reclamation operations. These requirements are in addition to the general permit requirements contained in this Subchapter G. All of the provisions of Subchapter G apply to these operations, unless otherwise specifically provided in this part.

§ 785.2 Objective.

The objective of this part is to ensure that permits are issued for certain categories of surface coal mining and reclamation operations only after the regulatory authority receives information that shows that these operations will be conducted according to the applicable requirements of the Act, Subchapter K, and applicable regulatory programs.

§ 785.10 Information collection.

The information collection requirements contained in 30 CFR 785.13 (e), (f), (g) and (h), 785.14, 785.15, 785.16, 785.17(b), 785.18(c), 785.19, 785.20, 785.21, and 785.22 have been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned clearance number 1029-0040. The information is being collected to meet the requirements of sections 711 and 515 of Pub. L. 95-87, which require applicants for special types of mining activities to provide a descriptions, maps and plans of the proposed activity. This information will be used by the regulatory authority in determining if the applicant can meet the applicable performance and environmental standards for the special type of mining activities. The obligation to respond is mandatory.

(30 U.S.C. 1201 *et seq.*)

[47 FR 33686, Aug. 4, 1982]

§ 785.11 Anthracite surface coal mining and reclamation operations.

(a) This section applies to any person who conducts or intends to conduct anthracite surface coal mining and reclamation operations in Pennsylvania.

(b) Each person who intends to conduct anthracite surface coal mining and reclamation operations in Pennsylvania shall apply for and obtain a permit in accordance with the requirements of this subchapter. The following standards apply to applications for and issuance of permits:

(1) In lieu of the requirements of 30 CFR Parts 816–817, the requirements of 30 CFR Part 820 shall apply.

(2) All other requirements of this chapter including the bonding and insurance requirements of 30 CFR 800.70, except the bond limits and the period of revegetation responsibility, to the extent they are required under sections 509 or 510 of the Act, shall apply.

(c) If the Pennsylvania anthracite permanent regulatory program in effect on August 3, 1977, is amended with respect to environmental protection performance standards, the Secretary shall issue additional regulations necessary to meet the purposes of the Act.

[44 FR 15370, Mar. 13, 1979, as amended at 48 FR 44780, Sept. 30, 1983]

§ 785.12 Special bituminous surface coal mining and reclamation operations.

(a) This section applies to any person who conducts or intends to conduct certain special bituminous coal surface mine operations in Wyoming.

(b) Each application for a permit for a special bituminous coal mine operation shall include, as part of the mining operations and reclamation plan, the detailed descriptions, maps and plans needed to demonstrate that the operations will comply with the requirements of the Act and 30 CFR Part 825.

(c) The regulatory authority may issue a permit for a special bituminous coal mine operation for which a complete application has been filed in accordance with this section, if it finds, in writing, that the operation will be conducted in compliance with the Act and 30 CFR Part 825.

(d) Upon amendment or revision to the Wyoming regulatory program, regulations, or decisions made thereunder, governing special bituminous coal mines, the Secretary shall issue additional regulations necessary to meet the purposes of the Act.

§ 785.13 Experimental practices mining.

(a) Experimental practices provide a variance from environmental protection performance standards of the Act, of Subchapter K of this chapter, and the regulatory program for experimental or research purposes, or to allow an alternative postmining land use, and may be undertaken if they are approved by the regulatory authority and the Director and if they are incorporated in a permit or permit revision issued in accordance with the requirements of Subchapter G of this chapter.

(b) An application for an experimental practice shall contain descriptions, maps, plans, and data which show—

(1) The nature of the experimental practice, including a description of the performance standards for which variances are requested, the duration of the experimental practice, and any special monitoring which will be conducted;

(2) How use of the experimental practice encourages advances in mining and reclamation technology or allows a postmining land use for industrial, commercial, residential, or public use (including recreation facilities) on an experimental basis;

(3) That the experimental practice—

(i) Is potentially more, or at least as, environmentally protective, during and after mining operations, as would otherwise be required by standards promulgated under Subchapter K of this chapter; and

(ii) Will not reduce the protection afforded public health and safety below that provided by the requirements of Subchapter K of this chapter; and

(4) That the applicant will conduct monitoring of the effects of the experimental practice. The monitoring pro-

gram shall ensure the collection, analysis, and reporting of reliable data that are sufficient to enable the regulatory authority and the Director to—

(i) Evaluate the effectiveness of the experimental practice; and

(ii) Identify, at the earliest possible time, potential risk to the environment and public health and safety which may be caused by the experimental practice during and after mining.

(c) Applications for experimental practices shall comply with the public notice requirements of § 773.13 of this chapter.

(d) No application for an experimental practice under this section shall be approved until the regulatory authority first finds in writing and the Director then concurs that—

(1) The experimental practice encourages advances in mining and reclamation technology or allows a postmining land use for industrial, commercial, residential, or public use (including recreational facilities) on an experimental basis;

(2) The experimental practice is potentially more, or at least as, environmentally protective, during and after mining operations, as would otherwise be required by standards promulgated under Subchapter K of this chapter;

(3) The mining operations approved for a particular land-use or other purpose are not larger or more numerous than necessary to determine the effectiveness and economic feasibility of the experimental practice; and

(4) The experimental practice does not reduce the protection afforded public health and safety below that provided by standards promulgated under Subchapter K of this chapter.

(e) Experimental practices granting variances from the special environmental protection performance standards of sections 515 and 516 of the Act applicable to prime farmlands shall be approved only after consultation with the U.S. Department of Agriculture, Soil Conservation Service.

(f) Each person undertaking an experimental practice shall conduct the periodic monitoring, recording and reporting program set forth in the application, and shall satisfy such additional requirements as the regulatory authority or the Director may impose to ensure protection of the public health and safety and the environment.

(g) Each experimental practice shall be reviewed by the regulatory authority at a frequeny set forth in the approved permit, but no less frequently than every 2½ years. After review, the regulatory authority may require such reasonable modifications of the experimental practice as are necessary to ensure that the activities fully protect the environment and the public health and safety. Copies of the decision of the regulatory authority shall be sent to the permittee and shall be subject to the provisions for administrative and judicial review of Part 775 of this chapter.

(h) Revisions or modifications to an experimental practice shall be processed in accordance with the requirements of § 774.13 of this chapter and approved by the regulatory authority. Any revisions which propose significant alterations in the experimental practice shall, at a minimum, be subject to notice, hearing, and public participation requirements of § 773.13 of this chapter and concurrence by the Director. Revisions that do not propose significant alterations in the experimental practice shall not require concurrence by the Director.

(30 U.S.C. 1201 *et seq.*)

[48 FR 9484, Mar. 4, 1983]

§ 785.14 Mountaintop removal mining.

(a) This section applies to any person who conducts or intends to conduct surface mining activities by mountaintop removal mining.

(b) Mountaintop removal mining means surface mining activities, where the mining operation removes an entire coal seam or seams running through the upper fraction of a mountain, ridge, or hill, except as provided for in 30 CFR 824.11(a)(6), by removing substantially all of the overburden off the bench and creating a level plateau or a gently rolling contour, with no highwalls remaining, and capable of supporting postmining land uses in accordance with the requirements of this section.

(c) The regulatory authority may issue a permit for mountaintop removal mining, without regard to the requirements of §§ 816.102, 816.104, 816.105, and 816.107 of this chapter to restore the lands disturbed by such mining to their approximate original contour, if it first finds, in writing, on the basis of a complete application, that the following requirements are met:

(1) The proposed postmining land use of the lands to be affected will be an industrial, commercial, agricultural, residential, or public facility (including recreational facilities) use and, if—

(i) After consultation with the appropriate land-use planning agencies, if any, the proposed land use is deemed by the regulatory authority to constitute an equal or better economic or public use of the affected land compared with the pre-mining use;

(ii) The applicant demonstrates compliance with the requirements for acceptable alternative postmining land uses of paragraphs (a) through (c) of § 816.133 of this chapter;

(iii) The proposed use would be compatible with adjacent land uses and existing State and local land use plans and programs; and

(iv) The regulatory authority has provided, in writing, an opportunity of not more than 60 days to review and comment on such proposed use to the governing body of general purpose government in whose jurisdiction the land is located and any State or Federal agency which the regulatory authority, in its discretion, determines to have an interest in the proposed use.

(2) The applicant demonstrates that in place of restoration of the land to be affected to the approximate original contour under §§ 816.102, 816.104, 816.105, and 816.107 of this chapter, the operation will be conducted in compliance with the requirements of Part 824 of this chapter.

(3) The requirements of 30 CFR 824 are made a specific condition of the permit.

(4) All other requirements of the Act, this chapter, and the regulatory program are met by the proposed operations.

(5) The permit is clearly identified as being for mountaintop removal mining.

(d)(1) Any permits incorporating a variance issued under this section shall be reviewed by the regulatory authority to evaluate the progress and development of mining activities to establish that the operator is proceeding in accordance with the terms of the variance—

(i) Within the sixth month preceding the third year from the date of its issuance;

(ii) Before each permit renewal; and

(iii) Not later than the middle of each permit term.

(2) Any review required under paragraph (d)(1) of this section need not be held if the permittee has demonstrated and the regulatory authority finds, in writing, within three months before the scheduled review, that all operations under the permit are proceeding and will continue to be conducted in accordance with the terms of the permit and requirements of the Act, this chapter, and the regulatory program.

(3) The terms and conditions of a permit for mountaintop removal mining may be modified at any time by the regulatory authority, if it determines that more stringent measures are necessary to insure that the operation involved is conducted in compliance with the requirements of the Act, this chapter, and the regulatory program.

[44 FR 15370, Mar. 13, 1979, as amended at 48 FR 39904, Sept. 1, 1983]

§ 785.15 Steep slope mining.

(a) This section applies to any persons who conducts or intends to conduct steep slope surface coal mining and reclamation operations, except—

(1) Where an operator proposes to conduct surface coal mining and reclamation operations on flat or gently rolling terrain, leaving a plain or predominantly flat area, but on which an occasional steep slope is encountered as the mining operation proceeds;

(2) Where a person obtains a permit under the provisions of § 785.14; or

(3) To the extent that a person obtains a permit incorporating a variance under § 785.16.

(b) Any application for a permit for surface coal mining and reclamation operations covered by this section shall contain sufficient information to establish that the operations will be conducted in accordance with the requirements of §§ 816.107 or 817.107 of this chapter.

(c) No permit shall be issued for any operations covered by this section, unless the regulatory authority finds, in writing, that in addition to meeting all other requirements of this subchapter, the operation will be conducted in accordance with the requirements of §§ 816.107 or 817.107 of this chapter.

[44 FR 15370, Mar. 13, 1979, as amended at 51 FR 9006, Mar. 17, 1986]

§ 785.16 Permits incorporating variances from approximate original contour restoration requirements.

(a) The regulatory authority may issue a permit for nonmountaintop removal mining which includes a variance from the requirements of §§ 816.102, 816.104, 816.104, 816.105, and 816.107 or 817.102 and 817.107 of this chapter to restore the disturbed areas to their approximate original contour. The permit may contain such a variance only if the regulatory authority finds, in writing, that the applicant has demonstrated, on the basis of a complete application, that the following requirments are met:

(1) After reclamation, the lands to be affected by the variance within the permit area will be suitable for an industrial, commercial, residential, or public postmining land use (including recreational facilities).

(2) The requirements of § 816.133 or 817.133 of this chapter will be met.

(3) The watershed of lands within the proposed permit and adjacent areas will be improved by the operations when compared with the condition of the watershed before mining or with its condition if the approximate original contour were to be restored. The watershed will be deemed improved only if—

(i) The amount of total suspended solids or other pollutants discharged to ground or surface water from the permit area will be reduced, so as to improve the public or private uses or the ecology of such water, or flood hazards within the watershed containing the permit area will be reduced by reduction of the peak flow discharge from precipitation events or thaws;

(ii) The total volume of flow from the proposed permit area, during every season of the year, will not vary in a way that adversely affects the ecology of any surface water or any existing or planned use of surface or ground water; and

(iii) The appropriate State environmental agency approves the plan.

(4) The owner of the surface of the lands within the permit area has knowingly requested, in writing, as part of the application, that a variance be granted. The request shall be made separately from any surface owner consent given for the operations under § 778.15 of this chapter and shall show an understanding that the variance could not be granted without the surface owner's request.

(b) If a variance is granted under this section——

(1) The requirements of § 816.133(d) or § 817.133(d) of this chapter shall be included as a specific condition of the permit; and

(2) The permit shall be specifically marked as containing a variance from approximate original contour.

(c) A permit incorporating a variance under this section shall be reviewed by the regulatory authority at least every 30 months following the issuance of the permit to evaluate the progress and development of the surface coal mining and reclamation operations to establish that the operator is proceeding in accordance with the terms of the variance.

(d) If the permittee demonstrates to the regulatory authority that the operations have been, and continue to be, conducted in compliance with the terms and conditions of the permit, the requirements of the Act, this chapter, and the regulatory program, the review specified in paragraph (c) of this section need not be held.

(e) The terms and conditions of a permit incorporating a variance under this section may be modified at any time by the regulatory authority, if it determines that more stringent measures are necessary to ensure that the operations involved are conducted in compliance with the requirements of the Act, this chapter, and the regulatory program.

(f) The regulatory authority may grant variances in accordance with this section only if it has promulgated specific rules to govern the granting of variances in accordance with the provisions of this section and any necessary, more stringent requirements.

[48 FR 39904, Sept. 1, 1983, as amended at 48 FR 44780, Sept. 30, 1983]

§ 785.17 Prime farmland.

(a) This section applies to any person who conducts or intends to conduct surface coal mining and reclamation operations on prime farmlands historically used for cropland. This section does not apply to:

(1) Lands on which surface coal mining and reclamation operations are conducted pursuant to any permit issued prior to August 3, 1977; or

(2) Lands on which surface coal mining and reclamation operations are conducted pursuant to any renewal or revision of a permit issued prior to August 3, 1977; or

(3) Lands included in any existing surface coal mining operations for which a permit was issued for all or any part thereof prior to August 3, 1977, provided that:

(i) Such lands are part of a single continuous surface coal mining operation begun under a permit issued before August 3, 1977; and

(ii) The permittee had a legal right to mine the lands prior to August 3, 1977, through ownership, contract, or lease but not including an option to buy, lease, or contract; and

(iii) The lands contain part of a continuous recoverable coal seam that was being mined in a single continuous mining pit (or multiple pits if the lands are proven to be part of a single continuous surface coal mining operation) begun under a permit issued prior to August 3, 1977.

(4) For purposes of this section:

(i) "Renewal" of a permit shall mean a decision by the regulatory authority to extend the time by which the permittee may complete mining within the boundaries of the original permit, and "revision" of the permit shall mean a decision by the regulatory authority to allow changes in the method of mining operations within the original permit area, or the decision of the regulatory authority to allow incidental boundary changes to the original permit;

(ii) A pit shall be deemed to be a single continuous mining pit even if portions of the pit are crossed by a road, pipeline, railroad, or powerline or similar crossing;

(iii) A single continuous surface coal mining operation is presumed to consist only of a single continuous mining pit under a permit issued prior to August 3, 1977, but may include noncontiguous parcels if the operator can prove by clear and convincing evidence that, prior to August 3, 1977, the noncontiguous parcels were part of a single permitted operation. For the purposes of this paragraph, clear and convincing evidence includes, but is not limited to, contracts, leases, deeds or other properly executed legal documents (not including options) that specifically treat physically separate parcels as one surface coal mining operation.

(b) *Application contents—Reconnaissance inspection.* (1) All permit applications, whether or not prime farmland is present, shall include the results of a reconnaissance inspection of the proposed permit area to indicate whether prime farmland exists. The regulatory authority in consultation with the U.S. Soil Conservation Service shall determine the nature and extent of the required reconnaissance inspection.

(2) If the reconnaissance inspection establishes that no land within the proposed permit area is prime farmland historically used for cropland, the applicant shall submit a statement that no prime farmland is present. The statement shall identify the basis upon which such a conclusion was reached.

(3) If the reconnaissance inspection indicates that land within the proposed permit area may be prime farmland historically used for cropland, the applicant shall determine if a soil survey exists for those lands and whether soil mapping units in the permit area have been designated as prime farmland. If no soil survey exists, the applicant shall have a soil

survey made of the lands within the permit area which the reconnaissance inspection indicates could be prime farmland. Soil surveys of the detail used by the U.S. Soil Conservation Service for operational conservation planning shall be used to identify and locate prime farmland soils.

(i) If the soil survey indicates that no prime farmland soils are present within the proposed permit area, paragraph (b)(2) of this section shall apply.

(ii) If the soil survey indicates that prime farmland soils are present within the proposed permit area, paragraph (c) of this section shall apply.

(c) *Application contents—Prime farmland.* All permit applications for areas in which prime farmland has been identified within the proposed permit area shall include the following:

(1) A soil survey of the permit area according to the standards of the National Cooperative Soil Survey and in accordance with the procedures set forth in U.S. Department of Agriculture Handbooks 436 "Soil Taxonomy" (U.S. Soil Conservation Service, 1975) as amended on March 22, 1982 and October 5, 1982, and 18, "Soil Survey Manual" (U.S. Soil Conservation Service, 1951), as amended on December 18, 1979, May 7, 1980, May 9, 1980, September 11, 1980, June 9, 1981, June 29, 1981, November 16, 1982. The U.S. Soil Conservation Service establishes the standards of the National Cooperative Soil Survey and maintains a National Soils Handbook which gives current acceptable procedures for conducting soil surveys. This National Soils Handbook is available for review at area and State SCS offices.

(i) U.S. Department of Agriculture Handbooks 436 and 18 are incorporated by reference as they exist on the date of adoption of this section. Notices of changes made to these publications will be periodically published by OSM in the FEDERAL REGISTER. The handbooks are on file and available for inspection at the OSM Central Office, U.S. Department of the Interior, 1951 Constitution Avenue, NW., Washington, D.C., at each OSM Technical Center and Field Office, and at the central office of the applicable State regulatory authority, if any. Copies of these documents are also available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, Stock Nos. 001-000-02597-0 and 001-000-00688-6, respectively. In addition, these documents are available for inspection at the national, State, and area offices of the Soil Conservation Service, U.S. Department of Agriculture, and at the Federal Register library, 1100 L Street, NW., Washington, D.C. Incorporation by reference provisions were approved by the Director of the FEDERAL REGISTER on June 29, 1981.

(ii) The soil survey shall include a description of soil mapping units and a representative soil profile as determined by the U.S. Soil Conservation Service, including, but not limited to, soil-horizon depths, pH, and the range of soil densities for each prime farmland soil unit within the permit area. Other representative soil-profile descriptions from the locality, prepared according to the standards of the National Cooperative Soil Survey, may be used if their use is approved by the State Conservationist, U.S. Soil Conservation Service. The regulatory authority may request the operator to provide information on other physical and chemical soil properties as needed to make a determination that the operator has the technological capability to restore the prime farmland within the permit area to the soil-reconstruction standards of Part 823 of this chapter.

(2) A plan for soil reconstruction, replacement, and stabilization for the purpose of establishing the technological capability of the mine operator to comply with the requirements of Part 823 of this chapter.

(3) Scientific data, such as agricultural-school studies, for areas with comparable soils, climate, and management that demonstrate that the proposed method of reclamation, including the use of soil mixtures or substitutes, if any, will achieve, within a reasonable time, levels of yield equivalent to, or higher than, those of nonmined prime farmland in the surrounding area.

(4) The productivity prior to mining, including the average yield of food, fiber, forage, or wood products obtained under a high level of management.

(d) *Consultation with Secretary of Agriculture.* (1) The Secretary of Agriculture has responsibilities with respect to prime farmland soils and has assigned the prime farmland responsibilities arising under the Act to the Chief of the U.S. Soil Conservation Service. The U.S. Soil Conservation Service shall carry out consultation and review through the State Conservationist located in each State.

(2) The State Conservationist shall provide to the regulatory authority a list of prime farmland soils, their location, physical and chemical characteristics, crop yields, and associated data necessary to support adequate prime farmland soil descriptions.

(3) The State Conservationist shall assist the regulatory authority in describing the nature and extent of the reconnaissance inspection required in paragraph (b)(1) of this section.

(4) Before any permit is issued for areas that include prime farmland, the regulatory authority shall consult with the State Conservationist. The State Conservationist shall provide for the review of, and comment on, the proposed method of soil reconstruction in the plan submitted under paragraph (c) of this section. If the State Conservationist considers those methods to be inadequate, he or she shall suggest revisions to the regulatory authority which result in more complete and adequate reconstruction.

(e) *Issuance of permit.* A permit for the mining and reclamation of prime farmland may be granted by the regulatory authority, if it first finds, in writing, upon the basis of a complete application, that—

(1) The approved proposed postmining land use of these prime farmlands will be cropland;

(2) The permit incorporates as specific conditions the contents of the plan submitted under paragraph (c) of this section, after consideration of any revisions to that plan suggested by the State Conservationist under paragraph (d)(4) of this section;

(3) The applicant has the technological capability to restore the prime farmland, within a reasonable time, to equivalent or higher levels of yield as non-mined prime farmland in the surrounding area under equivalent levels of management; and

(4) The proposed operations will be conducted in compliance with the requirements of 30 CFR Part 823 and other environmental protection performance and reclamation standards for mining and reclamation of prime farmland of the regulatory program.

(Pub. L. 95-87, 30 U.S.C. 1201 *et seq.*)

[44 FR 15370, Mar. 13, 1979, as amended at 46 FR 47722, Sept. 29, 1981; 48 FR 21462, May 12, 1983]

§ 785.18 Variances for delay in contemporaneous reclamation requirement in combined surface and underground mining activities.

(a) *Scope.* This section shall apply to any person or persons conducting or intending to conduct combined surface and underground mining activities where a variance is requested from the contemporaneous reclamation requirements of § 816.100 of this chapter.

(b) *Application contents for variances.* Any person desiring a variance under this section shall file with the regulatory authority complete applications for both the surface mining activities and underground mining activities which are to be combined. The reclamation and operation plans for these permits shall contain appropriate narratives, maps, and plans, which—

(1) Show why the proposed underground mining activities are necessary or desirable to assure maximum practical recovery of the coal;

(2) Show how multiple future disturbances of surface lands or waters will be avoided;

(3) Identify the specific surface areas for which a variance is sought and the sections of the Act, this chapter, and the regulatory program from which a variance is being sought;

(4) Show how the activities will comply with § 816.79 of this chapter and other applicable requirements of the regulatory program;

(5) Show why the variance sought is necessary for the implementation of the proposed underground mining activities;

(6) Provide an assessment of the adverse environmental consequences and damages, if any, that will result if the reclamation of surface mining activities is delayed; and

(7) Show how offsite storage of spoil will be conducted to comply with the requirements of the Act, §§ 816.71 through 816.74 of this chapter, and the regulatory program.

(c) *Issuance of permit.* A permit incorporating a variance under this section may be issued by the regulatory authority if it first finds, in writing, upon the basis of a complete application filed in accordance with this section, that—

(1) The applicant has presented, as part of the permit application, specific, feasible plans for the proposed underground mining activities;

(2) The proposed underground mining activities are necessary or desirable to assure maximum practical recovery of the mineral resource and will avoid multiple future disturbances of surface land or waters;

(3) The applicant has satisfactorily demonstrated that the applications for the surface mining activities and underground mining activities conform to the requirements of the regulatory program and that all other permits necessary for the underground mining activities have been issued by the appropriate authority;

(4) The surface area of surface mining activities proposed for the variance has been shown by the applicant to be necessary for implementing the proposed underground mining activities;

(5) No substantial adverse environmental damage, either onsite or offsite, will result from the delay in completion of reclamation otherwise required by section 515(b)(16) of the Act, Part 816 of this chapter, and the regulatory program;

(6) The operations will, insofar as a variance is authorized, be conducted in compliance with the requirements of § 816.79 of this chapter and the regulatory program;

(7) Provisions for offsite storage of spoil will comply with the requirements of section 515(b)(22) of the Act, §§ 816.71 through 816.74 of this chapter, and the regulatory program;

(8) Liability under the performance bond required to be filed by the applicant with the regulatory authority pursuant to Subchapter J of this chapter and the regulatory program will be for the duration of the underground mining activities and until all requirements of Subchapter J and the regulatory program have been complied with; and

(9) The permit for the surface mining activities contains specific conditions—

(i) Delineating the particular surface areas for which a variance is authorized;

(ii) Identifying the applicable provisions of section 515(b) of the Act, Part 816 of this chapter, and the regulatory program; and

(iii) Providing a detailed schedule for compliance with the provisions of this section.

(d) *Review of permits containing variances.* Variances granted by permits issued under this section shall be reviewed by the regulatory authority no later than 3 years from the dates of issuance of the permit and any permit renewals.

(30 U.S.C. 1201 *et seq.*)

[48 FR 24651, June 1, 1983]

§ 785.19 Surface coal mining and reclamation operations on areas or adjacent to areas including alluvial valley floors in the arid and semiarid areas west of the 100th meridian.

(a) *Alluvial valley floor determination.* (1) Permit applicants who propose to conduct surface coal mining and reclamation operations within a valley holding a stream or in a location where the permit area or adjacent area includes any stream, in the arid and semiarid regions of the United States, as an initial step in the permit process, may request the regulatory authority to make an alluvial valley floor determination with respect to that valley floor. The applicant shall demonstrate and the regulatory authority shall determine, based on either available data or field studies submitted by the applicant, or a combination of available data and field studies, the presence or absence of an alluvial valley floor. Studies shall include sufficiently detailed geologic, hydrologic, land use, soils, and vegetation data and analysis to demonstrate the probable existence of an alluvial valley floor in the area. The regulatory authority may require additional data collection and analysis or other supporting documents, maps, and illustrations in order to make the determination.

(2) The regulatory authority shall make a written determination as to the extent of any alluvial valley floors within the area. The regulatory authority shall determine that an alluvial valley floor exists if it finds that—

(i) Unconsolidated streamlaid deposits holding streams are present; and

(ii) There is sufficient water available to support agricultural activities as evidenced by—

(A) The existence of current flood irrigation in the area in question;

(B) The capability of an area to be flood irrigated, based on evaluations of typical regional agricultural practices, historical flood irrigation, streamflow, water quality, soils, and topography; or

(C) Subirrigation of the lands in question derived from the groundwater system of the valley floor.

(3) If the regulatory authority determines in writing that an alluvial valley does not exist pursuant to paragraph (a)(2) of this section, no further consideration of this section is required.

(b) *Applicability of statutory exclusions.* (1) If an alluvial valley floor is identified pursuant to paragraph (a)(2) of this section and the proposed surface coal mining operation may affect this alluvial valley floor or waters that supply the alluvial valley floor, the applicant may request the regulatory authority, as a preliminary step in the permit application process, to separately determine the applicability of the statutory exclusions set forth in paragraph (b)(2) of this section. The regulatory authority may make such a determination based on the available data, may require additional data collection and analysis in order to make the determination, or may require the applicant to submit a complete permit application and not make the determination until after the complete application is evaluated.

(2) An applicant need not submit the information required in paragraphs (d)(2) (ii) and (iii) of this section and a regulatory authority is not required to make the findings of paragraphs (e)(2) (i) and (ii) of this section when the regulatory authority determines that one of the following circumstances, heretofore called statutory exclusions, exist:

(i) The premining land use is undeveloped rangeland which is not significant to farming;

(ii) Any farming on the alluvial valley floor that would be affected by the surface coal mining operation is of such small acreage as to be of negligible impact on the farm's agricultural production. Negligible impact of the proposed operation on farming will be based on the relative importance of the affected vegetation and water of the developed grazed or hayed alluvial valley floor area to the farm's production over the life of the mine; or

(iii) The circumstances set forth in § 822.12(b) (3) or (4) of this chapter exist.

(3) For the purposes of this section, a farm is one or more land units on which agricultural activities are conducted. A farm is generally considered to be the combination of land units with acreage and boundaries in existence prior to August 3, 1977, or, if established after August 3, 1977, with those boundaries based on enhancement of the farm's agricultural productivity and not related to surface coal mining operations.

(c) *Summary denial.* If the regulatory authority determines that the statutory exclusions are not applicable and that any of the required findings of paragraph (e)(2) of this section cannot be made, the regulatory authority may, at the request of the applicant:

(1) Determine that mining is precluded on the proposed permit area and deny the permit without the applicant filing any additional information required by this section; or

(2) Prohibit surface coal mining and reclamation operations in all or parts of the area to be affected by mining.

(d) *Application contents for operations affecting designated alluvial valley floors.* (1) If land within the permit area or adjacent area is identified as an alluvial valley floor and the proposed surface coal mining operation may affect an alluvial valley floor or waters supplied to an alluvial valley floor, the applicant shall submit a complete application for the proposed surface coal mining and reclamation operations to be used by the regulatory authority together with other relevant information as a basis for approval or denial of the permit. If an exclusion of paragraph (b)(2) of this section applies, then the applicant need not submit the information required in paragraphs (d)(2) (ii) and (iii) of this section.

(2) The complete application shall include detailed surveys and baseline data required by the regulatory authority for a determination of—

(i) The characteristics of the alluvial valley floor which are necessary to preserve the essential hydrologic functions throughout the mining and reclamation process;

(ii) Whether the operation will avoid during mining and reclamation the interruption, discontinuance, or preclusion of farming on the alluvial valley floor;

(iii) Whether the operation will cause material damage to the quantity or quality of surface or ground waters supplied to the alluvial valley floor;

(iv) Whether the reclamation plan is in compliance with requirements of the Act, this chapter, and regulatory program; and

(v) Whether the proposed monitoring system will provide sufficient information to measure compliance with Part 822 of this chapter during and after mining and reclamation operations.

(e) *Findings.* (1) The findings of paragraphs (e)(2) (i) and (ii) of this section are not required with regard to alluvial valley floors to which are applicable any of the exclusions of paragraph (b)(2) of this section.

(2) No permit or permit revision application for surface coal mining and reclamation operations on lands located west of the 100th meridian west longitude shall be approved by the regulatory authority unless the application demonstrates and the regulatory authority finds in writing, on the basis of information set forth in the application, that—

(i) The proposed operations will not interrupt, discontinue, or preclude farming on an alluvial valley floor;

(ii) The proposed operations will not materially damage the quantity or quality of water in surface and underground water systems that supply alluvial valley floors; and

(iii) The proposed operations will comply with Part 822 of this chapter and the other applicable requirements of the Act and the regulatory program.

(Pub. L. 95-87, 30 U.S.C. 1201 *et seq.*)

[48 FR 29820, June 28, 1983]

§ 785.20 Augering.

(a) This section applies to any person who conducts or intends to conduct surface coal mining and reclamation operations utilizing augering operations.

(b) Any application for a permit for operations covered by this section shall contain, in the mining and reclamation plan, a description of the augering methods to be used and the measures to be used to comply with 30 CFR Part 819.

(c) No permit shall be issued for any operations covered by this section unless the regulatory authority finds, in writing, that in addition to meeting all other applicable requirements of this subchapter, the operation will be conducted in compliance with 30 CFR Part 819.

§ 785.21 Coal preparation plants not located within the permit area of a mine.

(a) This section applies to any person who operates or intends to operate a coal preparation plant outside the permit area of any mine, other than such plants which are located at the site of ultimate coal use. Any person who operates such a preparation plant shall obtain a permit from the regulatory authority in accordance with the requirements of this section.

(b) Any application for a permit for operations covered by this section shall contain an operation and reclamation plan which specifies plans, including descriptions, maps, and cross sections, of the construction, operation, maintenance, and removal of the preparation plant and support facilities operated incident thereto or resulting therefrom. The plan shall demonstrate that those operations will be conducted in compliance with Part 827 of this chapter.

(c) No permit shall be issued for any operation covered by this section, unless the regulatory authority finds in writing that, in addition to meeting all other applicable requirements of this subchapter, the operations will be conducted in compliance with the requirements of Part 827 of this chapter.

(d)(1) Except as provided in paragraph (d)(2) of this section, any person who operates a coal preparation plant beyond May 10, 1986 that was not subject to this chapter before July 6, 1984, shall apply for a permit no later than November 11, 1985.

(2)(i) States with State programs that have a statutory or regulatory bar precluding issuance of permits to facilities covered by paragraph (d)(1) of this section shall notify OSM not later than November 7, 1985 and shall establish a schedule for actions necessary to allow the permitting of such facilities as soon as practicable. Not later than December 9, 1985 this schedule shall be submitted to OSM for approval.

(ii) Any person who operates a coal preparation plant that was not subject to this chapter before July 6, 1984, in a state which submits a schedule in accordance with paragraph (d)(2)(i) of this section shall apply for a permit in accordance with the schedule approved by OSM.

(e) Notwithstanding § 773.11 of this chapter and except as prohibited by § 761.11 of this chapter, any person operating a coal preparation plant that was not subject to this chapter before July 6, 1984, may continue to operate without a permit until May 10, 1986, and may continue to operate beyond that date if (1) a permit application has been timely filed under paragraph (d)(1) of this section or under a State imposed schedule specified in paragraph (d)(2) of this section, (2) the regulatory authority has yet to either issue or deny the permit, and (3) the person complies with the applicable performance standards of § 827.13 of this chapter.

(30 U.S.C. 1201 *et seq.*)

[48 FR 20401, May 5, 1983, as amended at 50 FR 28189, July 10, 1985; 50 FR 31176, Aug. 1, 1985]

§ 785.22 In situ processing activities.

(a) This section applies to any person who conducts or intends to conduct surface coal mining and reclamation operations utilizing in situ processing activities.

(b) Any application for a permit for operations covered by this section shall be made according to all requirements of this subchapter applicable to underground mining activities. In addition, the mining and reclamation operations plan for operations involving in situ processing activities shall contain information establishing how those operations will be conducted in compliance with the requirements of 30 CFR Part 828, including—

(1) Delineation of proposed holes and wells and production zone for approval of the regulatory authority;

(2) Specifications of drill holes and casings proposed to be used;

(3) A plan for treatment, confinement or disposal of all acid-forming, toxic-forming or radioactive gases, solids, or liquids constituting a fire, health, safety or environmental hazard caused by the mining and recovery process; and

(4) Plans for monitoring surface and ground water and air quality, as required by the regulatory authority.

(c) No permit shall be issued for operations covered by this section, unless the regulatory authority first finds, in writing, upon the basis of a complete application made in accordance with paragraph (b) of this section, that the operation will be conducted in compliance with all requirements of this subchapter relating to underground mining activities, and 30 CFR Parts 817 and 828.

SUBCHAPTER H—SMALL OPERATOR ASSISTANCE

PART 795—PERMANENT REGULATORY PROGRAM—SMALL OPERATOR ASSISTANCE PROGRAM

Sec.

795.1 Scope and purpose.
795.3 Definitions.
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AUTHORITY: Secs. 201, 501, 502, and 507, Pub. L. 95-87, 91 Stat. 445 (30 U.S.C. 1201 *et seq.*).

SOURCE: 48 FR 2272, Jan. 18, 1983, unless otherwise noted.

§ 795.1 Scope and purpose.

This part comprises the Small Operator Assistance Program (SOAP) and establishes the procedures for providing assistance to eligible operators by the program administrator. It is an elective means for a regulatory authority to satisfy the requirements of section 507(c) of the Act. The purpose of the program is to provide for eligible operators a determination of probable hydrologic consequences and a statement of results of test borings or core samplings which are required components of the permit application under Subchapter G of this chapter.

§ 795.3 Definitions.

As used in this part—

Program administrator means the State of Federal official within the regulatory authority who has the authority and responsibility for overall management of the Small Operator Assistance Program; and

Qualified laboratory means a designated public agency, private firm, institution, or analytical laboratory which can prepare the required determination of probable hydrologic consequences or statement of results of test borings or core samplings under the Small Operator Assistance Program and which meets the standards of § 795.10.

§ 795.4 Information collection.

The information collection requirements contained in §§ 795.7, 795.9, and 795.10 have been approved by the Office of Management and Budget under 44 U.S.C. 3507 and have been assigned clearance numbers 1029-0014, 1029-0060, 1029-0061, and 1029-0062. The information is necessary to implement the Small Operator Assistance Program and its submission is mandatory.

§ 795.5 Grant application procedures.

A State intending to administer a Small Operator Assistance Program under a grant from the Office of Surface Mining may submit a grant application to OSM for funding of the program under the procedures of Part 735 of this chapter.

§ 795.6 Eligibility for assistance.

(a) An applicant is eligible for assistance if he or she—

(1) Intends to apply for a permit pursuant to the Act;

(2) Establishes that his or her probable total actual and attributed production from all locations during any consecutive 12-month period either during the term of his or her permit or during the first 5 years after issuance of his or her permit, whichever period is shorter, will not exceed 100,000 tons. Production from the following operations shall be attributed to the applicant—

(i) The pro rata share, based upon percentage of ownership of applicant, of coal produced by operations in which the applicant owns more than a 5 percent interest;

(ii) The pro rata share, based upon percentage of ownership of applicant, of coal produced in other operations by persons who own more than 5 percent of the applicant's operation;

(iii) All coal produced by operations owned by persons who directly or indirectly control the applicant by reason of direction of the management;

(iv) All coal produced by operations owned by members of the applicant's family and the applicants' relatives, unless it is established that there is no direct or indirect business relationship between or among them.

(3) Is not restricted in any manner from receiving a permit under the permanent regulatory program; and

(4) Does not organize or reorganize his or her company solely for the purpose of obtaining assistance under the SOAP.

(b) A State may provide alternate criteria or procedures for determining the eligibility of an operator for assistance under the program, provided that such criteria may not be used as a basis for grant requests in excess of that which would be authorized under the criteria of paragraph (a) of this section.

§ 795.7 Filing for assistance.

Each application for assistance shall include the following information:

(a) A statement of the operator's intent to file a permit application.

(b) The names and addresses of—

(1) The permit applicant; and

(2) The operator if different from the applicant.

(c) A schedule of the estimated total production of coal from the proposed permit area and all other locations from which production is attributed to the applicant under § 795.6 The schedule shall include for each location—

(1) The operator or company name under which coal is or will be mined;

(2) The permit number and Mine Safety and Health Administration (MSHA) number;

(3) The actual coal production during the year preceding the year for which the applicant applies for assistance and production that may be attributed to the applicant under § 795.6; and

(4) The estimated coal production and any production which may be attributed to the applicant for each year of the proposed permit.

(d) A description of—

(1) The proposed method of coal mining;

(2) The anticipated starting and termination dates of mining operations;

(3) The number of acres of land to be affected by the proposed mining operation; and

(4) A general statement on the probable depth and thickness of the coal resource including a statement of reserves in the permit area and the method by which they were calculated.

(e) A U.S. Geological Survey topographic map at a scale of 1:24,000 or larger or other topographic map of equivalent detail which clearly shows—

(1) The area of land to be affected;

(2) The location of any existing or proposed test borings; and

(3) The location and extent of known workings of any underground mines.

(f) Copies of documents which show that—

(1) The applicant has a legal right to enter and commence mining within the permit area; and

(2) A legal right of entry has been obtained for the program administrator and laboratory personnel to inspect the lands to be mined and adjacent areas to collect environmental data or to install necessary instruments.

§ 795.8 Application approval and notice.

(a) If the program administrator finds the applicant eligible, he or she shall inform the applicant in writing that the application is approved.

(b) If the program administrator finds the applicant ineligible, he or she shall inform the applicant in writing that the application is denied and shall state the reasons for denial.

§ 795.9 Program services and data requirements.

(a) To the extent possible with available funds, the program administrator shall select and pay a qualified laboratory to make the determination and statement referenced in paragraph (b) of this section for eligible operators who request assistance.

(b) The program administrator shall determine the data needed for each applicant or group of applicants. Data collected and the results provided to the program administrator shall be sufficient to satisfy the requirements for:

(1) The determination of the probable hydrologic consequences of the surface mining and reclamation operations in the proposed permit area and adjacent areas in accordance with §§ 780.21(f) and 784.14(e) and any other applicable provisions of this chapter; and

(2) The statement of the results of test borings or core samplings for the proposed permit area in accordance with §§ 780.22(b) and 784.22(b) and any other applicable provisions of this chapter.

(c) Data collection and analysis may proceed concurrently with the development of mining and reclamation plans by the operator.

(d) Data collected under this program shall be made publicly available in accordance with § 773.13(d) of this chapter. The program administrator shall develop procedures for interstate coordination and exchange of data.

[48 FR 2272, Jan. 18, 1983, as amended at 48 FR 44780, Sept. 30, 1983]

§ 795.10 Qualified laboratories.

(a) *Basic qualifications.* To be designated a qualified laboratory, a firm shall demonstrate that it—

(1) Is staffed with experienced, professional or technical personnel in the fields applicable to the work to be performed;

(2) Has adequate space for material preparation and cleaning and sterilizing equipment and has stationary equipment, storage, and space to accommodate workloads during peak periods;

(3) Meets applicable Federal or State safety and health requirements;

(4) Has analytical, monitoring and measuring equipment capable of meeting applicable standards; and

(5) Has the capability of collecting necessary field samples and making hydrologic field measurements and analytical laboratory determinations by acceptable hydrologic, geologic, or analytical methods in accordance with the requirements of §§ 780.21, 780.22, 784.14 and 784.22 and any other applicable provisions of this chapter. Other appropriate methods or guidelines for data acquisition may be approved by the program administrator.

(6) Has the capability of performing

services for either the determination or statement referenced in § 795.9(b).

(b) *Subcontractors.* Subcontractors, may be used to provide some of the required services provided their use is identified at the time a determination is made that a firm is qualified and they meet requirements specified by the program administrator.

§ 795.11 Assistance funding.

(a) *Use of funds.* Funds specifically authorized for this program shall be used to provide the services specified in § 795.9 and shall not be used to cover administrative expenses.

(b) *Allocation of funds.* The program administrator shall establish a formula for allocating funds to provide services for eligible small operators if available funds are less than those required to provide the services pursuant to this part.

§ 795.12 Applicant liability.

(a) The applicant shall reimburse the regulatory authority for the cost of the laboratory services performed pursuant to this part if—

(1) The applicant submits false information, fails to submit a permit application within 1 year from the date of receipt of the approved laboratory report, or fails to mine after obtaining a permit;

(2) The program administrator finds that the applicant's actual and attributed annual production of coal for all locations exceeds 100,000 tons during any consecutive 12-month period either during the term of the permit for which assistance is provided or during the first 5 years after issuance of the permit whichever is shorter; or

(3) The permit is sold, transferred, or assigned to another person and the transferee's total actual and attributed production exceeds the 100,000-ton annual production limit during any consecutive 12-month period of the remaining term of the permit. Under this paragraph the applicant and its successor are jointly and severally obligated to reimburse the regulatory authority.

(b) The program administrator may waive the reimbursement obligation if he or she finds that the applicant at all times acted in good faith.

SUBCHAPTER I—[RESERVED]

SUBCHAPTER J—BONDING AND INSURANCE REQUIREMENTS FOR SURFACE COAL MINING AND RECLAMATION OPERATIONS

PART 800—BOND AND INSURANCE REQUIREMENTS FOR SURFACE COAL MINING AND RECLAMATION OPERATIONS UNDER REGULATORY PROGRAMS

Sec.
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800.40 Requirement to release performance bonds.
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800.60 Terms and conditions for liability insurance.
800.70 Bonding for anthracite operations in Pennsylvania.

AUTHORITY: 30 U.S.C. 1201 *et seq.*, Pub. L. 95-87.

SOURCE: 48 FR 32959, July 19, 1983, unless otherwise noted.

§ 800.1 Scope and purpose.

This part sets forth the minimum requirements for filing and maintaining bonds and insurance for surface coal mining and reclamation operations under regulatory programs in accordance with the Act.

§ 800.4 Regulatory authority responsibilities.

(a) The regulatory authority shall prescribe and furnish forms for filing performance bonds.

(b) The regulatory authority shall prescribe by regulation terms and conditions for performance bonds and insurance.

(c) The regulatory authority shall determine the amount of the bond for each area to be bonded, in accordance with § 800.14. The regulatory authority shall also adjust the amount as acreage in the permit area is revised, or when other relevant conditions change according to the requirements of § 800.15.

(d) The regulatory authority may accept a self-bond if the permittee meets the requirements of § 800.23 and any additional requirements in the State or Federal program.

(e) The regulatory authority shall release liability under a bond or bonds in accordance with § 800.40.

(f) If the conditions specified in § 800.50 occur, the regulatory authority shall take appropriate action to cause all or part of a bond to be forfeited in accordance with procedures of that section.

(g) The regulatory authority shall require in the permit that adequate bond coverage be in effect at all times. Except as provided in § 800.16(e)(2), operating without a bond is a violation of a condition upon which the permit is issued.

§ 800.5 Definitions.

(a) *Surety bond* means an indemnity agreement in a sum certain payable to the regulatory authority, executed by the permittee as principal and which is supported by the performance guarantee of a corporation licensed to do business as a surety in the State where the operation is located.

(b) *Collateral bond* means an indemnity agreement in a sum certain executed by the permittee as principal which is supported by the deposit with the regulatory authority of one or more of the following:

(1) A cash account, which shall be the deposit of cash in one or more federally-insured or equivalently protected accounts, payable only to the regulatory authority upon demand, or the

deposit of cash directly with the regulatory authority;

(2) Negotiable bonds of the United States, a State, or a municipality, endorsed to the order of, and placed in the possession of, the regulatory authority;

(3) Negotiable certificates of deposit, made payable or assigned to the regulatory authority and placed in its possession or held by a federally-insured bank;

(4) An irrevocable letter of credit of any bank organized or authorized to transact business in the United States, payable only to the regulatory authority upon presentation;

(5) A perfected, first-lien security interest in real property in favor of the regulatory authority; or

(6) Other investment-grade rated securities having a rating of AAA, AA, or A or an equivalent rating issued by a nationally recognized securities rating service, endorsed to the order of, and placed in the possession of, the regulatory authority.

(c) *Self-bond* means an indemnity agreement in a sum certain executed by the permittee or the parent company guarantor and made payable to the regulatory authority, with or without separate surety.

§ 800.10 Information collection.

The information collection requirements contained in §§ 800.11, 800.15(c), 800.21, 800.40, 800.50(a), and 800.60 have been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned clearance number 1029-0043. The information is being collected to meet the requirements of sections 509 and 519 of the Act, which require all applicants to file a bond with the regulatory authority prior to a permit being issued, and require written requests for bond release. This information will be used by the regulatory authority to ensure that sufficient funds are available for reclamation. The obligation to respond is mandatory.

§ 800.11 Requirement to file a bond.

(a) After a permit application under Subchapter G of this chapter has been approved, but before a permit is issued, the applicant shall file with the regulatory authority, on a form prescribed and furnished by the regulatory authority, a bond or bonds for performance made payable to the regulatory authority and conditioned upon the faithful performance of all the requirements of the Act, the regulatory program, the permit, and the reclamation plan.

(b)(1) The bond or bonds shall cover the entire permit area, or an identified increment of land within the permit area upon which the operator will initiate and conduct surface coal mining and reclamation operations during the initial term of the permit.

(2) As surface coal mining and reclamation operations on succeeding increments are initiated and conducted within the permit area, the permittee shall file with the regulatory authority an additional bond or bonds to cover such increments in accordance with this section.

(3) The operator shall identify the initial and successive areas or increments for bonding on the permit application map submitted for approval as provided in the application (under Parts 780 and 784 of this chapter), and shall specify the bond amount to be provided for each area or increment.

(4) Independent increments shall be of sufficient size and configuration to provide for efficient reclamation operations should reclamation by the regulatory authority become necessary pursuant to § 800.50.

(c) An operator shall not disturb any surface areas, succeeding increments, or extend any underground shafts, tunnels or operations prior to acceptance by the regulatory authority of the required performance bond.

(d) The applicant shall file, with the approval of the regulatory authority, a bond or bonds under one of the following schemes to cover the bond amounts for the permit area as determined in accordance with § 800.14:

(1) A performance bond or bonds for the entire permit area;

(2) A cumulative bond schedule and the performance bond required for full reclamation of the initial area to be disturbed; or

(3) An incremental bond schedule and the performance bond required

for the first increment in the schedule.

(e) OSM may approve, as part of a State or Federal program, an alternative bonding system, if it will achieve the following objectives and purposes of the bonding program:

(1) The alternative must assure that the regulatory authority will have available sufficient money to complete the reclamation plan for any areas which may be in default at any time; and

(2) The alternative must provide a substantial economic incentive for the permittee to comply with all reclamation provisions.

Editorial Note: For a document suspending § 800.11(b) "insofar as it allows the bond to be posted for less than the entire area within the permit area upon which surface coal mining and reclamation operations will be conducted during the initial permit term", see 50 FR 7278, Feb. 21, 1985.

§ 800.12 Form of the performance bond.

The regulatory authority shall prescribe the form of the performance bond. The regulatory authority may allow for:

(a) A surety bond;

(b) A collateral bond;

(c) A self-bond; or

(d) A combination of any of these bonding methods.

§ 800.13 Period of liability.

(a)(1) Performance bond liability shall be for the duration of the surface coal mining and reclamation operation and for a period which is coincident with the operator's period of extended responsibility for successful revegetation provided in § 816.116 or § 817.116 of this chapter or until achievement of the reclamation requirements of the Act, regulatory programs, and permit, whichever is later.

(2) With the approval of regulatory authority, a bond may be posted and approved to guarantee specific phases of reclamation within the permit area provided the sum of phase bonds posted equals or exceeds the total amount required under §§ 800.14 and 800.15. The scope of work to be guaranteed and the liability assumed under each phase bond shall be specified in detail.

(b) Isolated and clearly defined portions of the permit area requiring extended liability may be separated from the original area and bonded separately with the approval of the regulatory authority. Such areas shall be limited in extent and not constitute a scattered, intermittent, or checkerboard pattern of failure. Access to the separated areas for remedial work may be included in the area under extended liability if deemed necessary by the regulatory authority.

(c) If the regulatory authority approves a long-term, intensive agricultural postmining land use, in accordance with § 816.133 or § 817.133 of this chapter, the applicable 5 or 10 year period of liability shall commence at the date of initial planting for such long-term agricultural use.

(d)(1) The bond liability of the permittee shall include only those actions which he or she is obligated to take under the permit, including completion of the reclamation plan, so that the land will be capable of supporting the postmining land use approved under § 816.133 or § 817.133 of this chapter.

(2) Implementation of an alternative postmining land use approved under §§ 816.133(c) and 817.133(c) which is beyond the control of the permittee, need not be covered by the bond. Bond liability for prime farmland shall be as specified in § 800.40(c)(2).

Editorial Note: For a document suspending § 800.13(a)(2), see 50 FR 7278, Feb. 21, 1985.

§ 800.14 Determination of bond amount.

(a) The amount of the bond required for each bonded area shall:

(1) Be determined by the regulatory authority;

(2) Depend upon the requirements of the approved permit and reclamation plan;

(3) Reflect the probable difficulty of reclamation, giving consideration to such factors as topography, geology, hydrology, and revegetation potential; and

(4) Be based on, but not limited to, the estimated cost submitted by the permit applicant.

(b) The amount of the bond shall be sufficient to assure the completion of the reclamation plan if the work has to be performed by the regulatory authority in the event of forfeiture, and in no case shall the total bond initially posted for the entire area under one permit be less than $10,000.

(c) An operator's financial responsibility under § 817.121(c) of this chapter for repairing material damage resulting from subsidence may be satisfied by the liability insurance policy required under § 800.60.

§ 800.15 Adjustment of amount.

(a) The amount of the bond or deposit required and the terms of the acceptance of the applicant's bond shall be adjusted by the regulatory authority from time to time as the area requiring bond coverage is increased or decreased or where the cost of future reclamation changes. The regulatory authority may specify periodic times or set a schedule for reevaluating and adjusting the bond amount to fulfill this requirement.

(b) The regulatory authority shall—

(1) Notify the permittee, the surety, and any person with a property interest in collateral who has requested notification under § 800.21(f) of any proposed adjustment to the bond amount; and

(2) Provide the permittee an opportunity for an informal conference on the adjustment.

(c) A permittee may request reduction of the amount of the performance bond upon submission of evidence to the regulatory authority proving that the permittee's method of operation or other circumstances reduces the estimated cost for the regulatory authority to reclaim the bonded area. Bond adjustments which involve undisturbed land or revision of the cost estimate of reclamation are not considered bond release subject to procedures of § 800.40.

(d) In the event that an approved permit is revised in accordance with Subchapter G of this chapter, the regulatory authority shall review the bond for adequacy and, if necessary, shall require adjustment of the bond to conform to the permit as revised.

§ 800.16 General terms and conditions of bond.

(a) The performance bond shall be in an amount determined by the regulatory authority as provided in § 800.14.

(b) The performance bond shall be payable to the regulatory authority.

(c) The performance bond shall be conditioned upon faithful performance of all the requirements of the Act, this chapter, the regulatory program, and the approved permit, including completion of the reclamation plan.

(d) The duration of the bond shall be for the time period provided in § 800.13.

(e)(1) The bond shall provide a mechanism for a bank or surety company to give prompt notice to the regulatory authority and the permittee of any action filed alleging the insolvency or bankruptcy of the surety company, the bank, or the permittee, or alleging any violations which would result in suspension or revocation of the surety or bank charter or license to do business.

(2) Upon the incapacity of a bank or surety company by reason of bankruptcy, insolvency, or suspension or revocation of a charter or license, the permittee shall be deemed to be without bond coverage and shall promptly notify the regulatory authority. The regulatory authority, upon notification received through procedures of paragraph (e)(1) of this section or from the permittee, shall, in writing, notify the operator who is without bond coverage and specify a reasonable period, not to exceed 90 days, to replace bond coverage. If an adequate bond is not posted by the end of the period allowed, the operator shall cease coal extraction and shall comply with the provisions of § 816.132 or § 817.132 of this chapter and shall immediately begin to conduct reclamation operations in accordance with the reclamation plan. Mining operations shall not resume until the regulatory authority has determined that an acceptable bond has been posted.

§ 800.17 Bonding requirements for underground coal mines and long-term coal-related surface facilities and structures.

(a) *Responsibilities.* The regulatory authority shall require bond coverage, in an amount determined under § 800.14, for long-term surface facilities and structures, and for areas disturbed by surface impacts incident to underground mines, for which a permit is required. Specific reclamation techniques required for underground mines and long-term facilities shall be considered in determining the amount of bond to complete the reclamation.

(b) *Long-term period of liability.* (1) The period of liability for every bond covering long-term surface disturbances shall commence with the issuance of a permit, except that to the extent that such disturbances will occur on a succeeding increment to be bonded, such liability will commence upon the posting of the bond for that increment before the initial surface disturbance of that increment. The liability period shall extend until all reclamation, restoration, and abatement work under the permit has been completed and the bond is released under the provisions of § 800.40, or until the bond has been replaced or extended in accordance with § 800.17(b)(3).

(2) Long-term surface disturbances shall include long-term coal-related surface facilities and structures, and surface impacts incident to underground coal mining, which disturb an area for a period that exceeds 5 years. Long-term surface disturbances include, but are not limited to: surface features of shafts and slope facilities, coal refuse areas, powerlines, boreholes, ventilation shafts, preparation plants, machine shops, roads, and loading and treatment facilities.

(3) To achieve continuous bond coverage for long-term surface disturbances, the bond shall be conditioned upon extension, replacement, or payment in full, 30 days prior to the expiration of the bond term.

(4) Continuous bond coverage shall apply throughout the period of extended responsibility for successful revegetation and until the provisions of § 800.40 have been met.

(c) *Bond forfeiture.* The regulatory authority shall take action to forfeit a bond pursuant to this section, if 30 days prior to bond expiration, the operator has not filed: (1) A performance bond for a new term as required for continuous coverage, or (2) a performance bond providing coverage for the period of liability, including the period of extended responsibility for successful revegetation.

§ 800.20 Surety bonds.

(a) A surety bond shall be executed by the operator and a corporate surety licensed to do business in the State where the operation is located.

(b) Surety bonds shall be noncancellable during their terms, except that surety bond coverage for lands not disturbed may be cancelled with the prior consent of the regulatory authority. The regulatory authority shall advise the surety, within 30 days after receipt of a notice to cancel bond, whether the bond may be cancelled on an undisturbed area.

§ 800.21 Collateral bonds.

(a) Collateral bonds, except for letters of credit, cash accounts, and real property, shall be subject to the following conditions:

(1) The regulatory authority shall keep custody of collateral deposited by the applicant until authorized for release or replacement as provided in this subchapter.

(2) The regulatory authority shall value collateral at its current market value, not at face value.

(3) The regulatory authority shall require that certificates of deposit be made payable to or assigned to the regulatory authority, both in writing and upon the records of the bank issuing the certificates. If assigned, the regulatory authority shall require the banks issuing these certificates to waive all rights of setoff or liens against those certificates.

(4) The regulatory authority shall not accept an individual certificate of deposit in an amount in excess of $100,000 or the maximum insurable amount as determined by the Federal

Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation.

(b) Letters of credit shall be subject to the following conditions:

(1) The letter may be issued only by a bank organized or authorized to do business in the United States;

(2) Letters of credit shall be irrevocable during their terms. A letter of credit used as security in areas requiring continuous bond coverage shall be forfeited and shall be collected by the regulatory authority if not replaced by other suitable bond or letter of credit at least 30 days before its expiration date.

(3) The letter of credit shall be payable to the regulatory authority upon demand, in part or in full, upon receipt from the regulatory authority of a notice of forfeiture issued in accordance with § 800.50.

(c) Real property posted as a collateral bond shall meet the following conditions:

(1) The applicant shall grant the regulatory authority a first mortgage, first deed of trust, or perfected first-lien security interest in real property with a right to sell or otherwise dispose of the property in the event of forfeiture under § 800.50.

(2) In order for the regulatory authority to evaluate the adequacy of the real property offered to satisfy collateral requirements, the applicant shall submit a schedule of the real property which shall be mortgaged or pledged to secure the obligations under the indemnity agreement. The list shall include—

(i) A description of the property;

(ii) The fair market value as determined by an independent appraisal conducted by a certified appraiser; and

(iii) Proof of possession and title to the real property.

(3) The property may include land which is part of the permit area; however, land pledged as collateral for a bond under this section shall not be disturbed under any permit while it is serving as security under this section.

(d) Cash accounts shall be subject to the following conditions:

(1) The regulatory authority may authorize the operator to supplement the bond through the establishment of a cash account in one or more federally-insured or equivalently protected accounts made payable upon demand to, or deposited directly with, the regulatory authority. The total bond including the cash account shall not be less than the amount required under terms of performance bonds including any adjustments, less amounts released in accordance with § 800.40.

(2) Any interest paid on a cash account shall be retained in the account and applied to the bond value of the account unless the regulatory authority has approved the payment of interest to the operator.

(3) Certificates of deposit may be substituted for a cash account with the approval of the regulatory authority.

(4) The regulatory authority shall not accept an individual cash account in an amount in excess of $100,000 or the maximum insurable amount as determined by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation.

(e)(1) The estimated bond value of all collateral posted as assurance under this section shall be subject to a margin which is the ratio of bond value to market value, as determined by the regulatory authority. The margin shall reflect legal and liquidation fees, as well as value depreciation, marketability, and fluctuations which might affect the net cash available to the regulatory authority to complete reclamation.

(2) The bond value of collateral may be evaluated at any time but it shall be evaluated as part of permit renewal and, if necessary, the performance bond amount increased or decreased. In no case shall the bond value of collateral exceed the market value.

(f) Persons with an interest in collateral posted as a bond, and who desire notification of actions pursuant to the bond, shall request the notification in writing to the regulatory authority at the time collateral is offered.

§ 800.23 Self-bonding.

(a) *Definitions.* For the purposes of this section only:

Current assets means cash or other assets or resources which are reasonably expected to be converted to cash or sold or consumed within one year or within the normal operating cycle of the business.

Current liabilities means obligations which are reasonably expected to be paid or liquidated within one year or within the normal operating cycle of the business.

Fixed assets means plants and equipment, but does not include land or coal in place.

Liabilities means obligations to transfer assets or provide services to other entities in the future as a result of past transactions.

Net worth means total assets minus total liabilities and is equivalent to owners' equity.

Parent corporation means a corporation which owns or controls the applicant.

Tangible net worth means net worth minus intangibles such as goodwill and rights to patents or royalties.

(b) The regulatory authority may accept a self-bond from an applicant for a permit if all of the following conditions are met by the applicant or its parent corporation guarantor:

(1) The applicant designates a suitable agent to receive service of process in the State where the proposed surface coal mining operation is to be conducted.

(2) The applicant has been in continuous operation as a business entity for a period of not less than 5 years. Continuous operation shall mean that business was conducted over a period of 5 years immediately preceding the time of application.

(i) The regulatory authority may allow a joint venture or syndicate with less than 5 years of continuous operation to qualify under this requirement, if each member of the joint venture or syndicate has been in continuous operation for at least 5 years immediately preceding the time of application.

(ii) When calculating the period of continuous operation, the regulatory authority may exclude past periods of interruption to the operation of the business entity that were beyond the applicant's control and that do not affect the applicant's likelihood of remaining in business during the proposed surface coal mining and reclamation operations.

(3) The applicant submits financial information in sufficient detail to show that the applicant meets one of the following criteria:

(i) The applicant has a current rating for its most recent bond issuance of "A" or higher as issued by either Moody's Investor Service or Standard and Poor's Corporation;

(ii) The applicant has a tangible net worth of at least $10 million, a ratio of total liabilities to net worth of 2.5 times or less, and a ratio of current assets to current liabilities of 1.2 times or greater; or

(iii) The applicant's fixed assets in the United States total at least $20 million, and the applicant has a ratio of total liabilities to net worth of 2.5 times or less, and a ratio of current assets to current liabilities of 1.2 times or greater.

(4) The applicant submits;

(i) Financial statements for the most recently completed fiscal year accompanied by a report prepared by an independent certified public accountant in conformity with generally accepted accounting principles and containing the accountant's audit opinion or review opinion of the financial statements with no adverse opinion;

(ii) Unaudited financial statements for completed quarters in the current fiscal year; and

(iii) Additional unaudited information as requested by the regulatory authority.

(c) The regulatory authority may accept a written guarantee for an applicant's self-bond from a parent corporation guarantor, if the guarantor meets the conditions of paragraphs (b)(1) through (b)(4) of this section as if it were the applicant. Such a written guarantee shall be referred to as a "corporate guarantee." The terms of the corporate guarantee shall provide for the following:

(1) If the applicant fails to complete the reclamation plan, the guarantor shall do so or the guarantor shall be liable under the indemnity agreement to provide funds to the regulatory authority sufficient to complete the rec-

lamation plan, but not to exceed the bond amount.

(2) The corporate guarantee shall remain in force unless the guarantor sends notice of cancellation by certified mail to the applicant and to the regulatory authority at least 90 days in advance of the cancellation date, and the regulatory authority accepts the cancellation.

(3) The cancellation may be accepted by the regulatory authority if the applicant obtains suitable replacement bond before the cancellation date or if the lands for which the self-bond, or portion thereof, was accepted have not been disturbed.

(d) For the regulatory authority to accept an applicant's self-bond, the total amount of the outstanding and proposed self-bonds of the applicant for surface coal mining and reclamation operations shall not exceed 25 percent of the applicant's tangible net worth in the United States. For the regulatory authority to accept a corporate guarantee, the total amount of the parent corporation guarantor's present and proposed self-bonds and guaranteed self-bonds for surface coal mining and reclamation operations shall not exceed 25 percent of the guarantor's tangible net worth in the United States.

(e) If the regulatory authority accepts an applicant's self-bond, an indemnity agreement shall be submitted subject to the following requirements:

(1) The indemnity agreement shall be executed by all persons and parties who are to be bound by it, including the parent corporation guarantor, and shall bind each jointly and severally.

(2) Corporations applying for a self-bond or parent corporations guaranteeing a subsidiary's self-bond shall submit an indemnity agreement signed by two corporate officers who are authorized to bind the corporation. A copy of such authorization shall be provided to the regulatory authority.

(3) If the applicant is a partnership, joint venture or syndicate, the agreement shall bind each partner or party who has a beneficial interest, directly or indirectly, in the applicant.

(4) Pursuant to § 800.50, the applicant or parent corporation guarantor shall be required to complete the approved reclamation plan for the lands in default or to pay to the regulatory authority an amount necessary to complete the approved reclamation plan, not to exceed the bond amount. If permitted under State law, the indemnity agreement when under forfeiture shall operate as a judgment against those parties liable under the indemnity agreement.

(f) A regulatory authority may require self-bonded applicants and parent guarantors to submit an update of the information required under paragraphs (b)(3) and (b)(4) of this section within 90 days after the close of each fiscal year following the issuance of the self-bond or corporate guarantee.

(g) If at any time during the period when a self-bond is posted, the financial conditions of the applicant or the parent corporation guarantor change so that the criteria of paragraphs (b)(3) and (d) of this section are not satisfied, the permittee shall notify the regulatory authority immediately and shall within 90 days post an alternate form of bond in the same amount as the self-bond. Should the permittee fail to post an adequate substitute bond, the provisions of § 800.16(e) shall apply.

[48 FR 36429, Aug. 10, 1983]

§ 800.30 Replacement of bonds.

(a) The regulatory authority may allow a permittee to replace existing bonds with other bonds that provide equivalent coverage.

(b) The regulatory authority shall not release existing performance bonds until the permittee has submitted, and the regulatory authority has approved, acceptable replacement performance bonds. Replacement of a performance bond pursuant to this section shall not constitute a release of bond under § 800.40.

§ 800.40 Requirement to release performance bonds.

(a) *Bond release application.* (1) The permittee may file an application with the regulatory authority for the release of all or part of a performance bond. Applications may be filed only at times or during seasons authorized by the regulatory authority in order to properly evaluate the completed reclamation operations. The times or seasons appropriate for the evaluation of certain types of reclamation shall be established in the regulatory program or identified in the mining and reclamation plan required in Subchapter G of this chapter and approved by the regulatory authority.

(2) Within 30 days after an application for bond release has been filed with the regulatory authority, the operator shall submit a copy of an advertisement placed at least once a week for four successive weeks in a newspaper of general circulation in the locality of the surface coal mining operation. The advertisement shall be considered part of any bond release application and shall contain the permit number and approval date, notification of the precise location of the land affected, the number of acres, the type and amount of the bond filed and the portion sought to be released, the type and appropriate dates of reclamation work performed, a description of the results achieved as they relate to the operator's approved reclamation plan, and the name and address of the regulatory authority to which written comments, objections, or requests for public hearings and informal conferences on the specific bond release may be submitted pursuant to § 800.40 (f) and (h). In addition, as part of any bond release application, the applicant shall submit copies of letters which he or she has sent to adjoining property owners, local governmental bodies, planning agencies, sewage and water treatment authorities, and water companies in the locality in which the surface coal mining and reclamation operation took place, notifying them of the intention to seek release from the bond.

(b) *Inspection by regulatory authority.* (1) Upon receipt of the bond release application, the regulatory authority shall, within 30 days, or as soon thereafter as weather conditions permit, conduct an inspection and evaluation of the reclamation work involved. The evaluation shall consider, among other factors, the degree of difficulty to complete any remaining reclamation, whether pollution of surface and subsurface water is occurring, the probability of future occurrence of such pollution, and the estimated cost of abating such pollution. The surface owner, agent, or lessee shall be given notice of such inspection and may participate with the regulatory authority in making the bond release inspection. The regulatory authority may arrange with the permittee to allow access to the permit area, upon request by any person with an interest in bond release, for the purpose of gathering information relevant to the proceeding.

(2) Within 60 days from the filing of the bond release application, if no public hearing is held pursuant to paragraph (f) of this section, or, within 30 days after a public hearing has been held pursuant to paragraph (f) of this section, the regulatory authority shall notify in writing the permittee, the surety or other persons with an interest in bond collateral who have requested notification under § 800.21(f), and the persons who either filed objections in writing or objectors who were a party to the hearing proceedings, if any, of its decision to release or not to release all or part of the performance bond.

(c) The regulatory authority may release all or part of the bond for the entire permit area or incremental area if the regulatory authority is satisfied that all the reclamation or a phase of the reclamation covered by the bond or portion thereof has been accomplished in accordance with the following schedules for reclamation of Phases I, II, and III:

(1) At the completion of Phase I, after the operator completes the backfilling, regrading (which may include the replacement of topsoil) and drainage control of a bonded area in accordance with the approved reclamation plan, 60 percent of the bond or collateral for the applicable area.

(2) At the completion of Phase II, after revegetation has been established on the regraded mined lands in accordance with the approved reclamation plan, an additional amount of bond. When determining the amount of bond to be released after successful revegetation has been established, the regulatory authority shall retain that amount of bond for the revegetated

area which would be sufficient to cover the cost of reestablishing revegetation if completed by a third party and for the period specified for operator responsibility in section 515 of the Act for reestablishing revegetation. No part of the bond or deposit shall be released under this paragraph so long as the lands to which the release would be applicable are contributing suspended solids to streamflow or runoff outside the permit area in excess of the requirements set by section 515(b)(10) of the Act and by Subchapter K of this chapter or until soil productivity for prime farmlands has returned to the equivalent levels of yield as nonmined land of the same soil type in the surrounding area under equivalent management practices as determined from the soil survey performed pursuant to section 507(b)(16) of the Act and Part 823 of this chapter. Where a silt dam is to be retained as a permanent impoundment pursuant to Subchapter K of this chapter, the Phase II portion of the bond may be released under this paragraph so long as provisions for sound future maintenance by the operator or the landowner have been made with the regulatory authority.

(3) At the completion of Phase III, after the operator has completed successfully all surface coal mining and reclamation activities, the release of the remaining portion of the bond, but not before the expiration of the period specified for operator responsibility in § 816.116 or § 817.116 of this chapter. However, no bond shall be fully released under provisions of this section until reclamation requirements of the Act and the permit are fully met.

(d) If the regulatory authority disapproves the application for release of the bond or portion thereof, the regulatory authority shall notify the permittee, the surety, and any person with an interest in collateral as provided for in § 800.21(f), in writing, stating the reasons for disapproval and recommending corrective actions necessary to secure the release and allowing an opportunity for a public hearing.

(e) When any application for total or partial bond release is filed with the regulatory authority, the regulatory authority shall notify the municipality in which the surface coal mining operation is located by certified mail at least 30 days prior to the release of all or a portion of the bond.

(f) Any person with a valid legal interest which might be adversely affected by release of the bond, or the responsible officer or head of any Federal, State, or local governmental agency which has jurisdiction by law or special expertise with respect to any environmental, social, or economic impact involved in the operation or which is authorized to develop and enforce environmental standards with respect to such operations, shall have the right to file written objections to the proposed release from bond with the regulatory authority within 30 days after the last publication of the notice required by § 800.40(a)(2). If written objections are filed and a hearing is requested, the regulatory authority shall inform all the interested parties of the time and place of the hearing, and shall hold a public hearing within 30 days after receipt of the request for the hearing. The date, time, and location of the public hearing shall be advertised by the regulatory authority in a newspaper of general circulation in the locality for two consecutive weeks. The public hearing shall be held in the locality of the surface coal mining operation from which bond release is sought, at the location of the regulatory authority office, or at the State capital, at the option of the objector.

(g) For the purpose of the hearing under paragraph (f) of this section, the regulatory authority shall have the authority to administer oaths, subpoena witnesses or written or printed material, compel the attendance of witnesses or the production of materials, and take evidence including, but not limited to, inspection of the land affected and other surface coal mining operations carried on by the applicant in the general vicinity. A verbatim record of each public hearing shall be made, and a transcript shall be made available on the motion of any party or by order of the regulatory authority.

(h) Without prejudice to the right of an objector or the applicant, the regulatory authority may hold an informal conference as provided in section 513(b) of the Act to resolve such written objections. The regulatory authority shall make a record of the informal conference unless waived by all parties, which shall be accessible to all parties. The regulatory authority shall also furnish all parties of the informal conference with a written finding of the regulatory authority based on the informal conference, and the reasons for said finding.

[48 FR 32959, July 19, 1983, as amended at 48 FR 44780, Sept. 30, 1983]

§ 800.50 Forfeiture of bonds.

(a) If an operator refuses or is unable to conduct reclamation of an unabated violation, if the terms of the permit are not met, or if the operator defaults on the conditions under which the bond was accepted, the regulatory authority shall take the following action to forfeit all or part of a bond or bonds for any permit area or an increment of a permit area:

(1) Send written notification by certified mail, return receipt requested, to the permittee and the surety on the bond, if any, informing them of the determination to forfeit all or part of the bond, including the reasons for the forfeiture and the amount to be forfeited. The amount shall be based on the estimated total cost of achieving the reclamation plan requirements.

(2) Advise the permittee and surety, if applicable, of the conditions under which forfeiture may be avoided. Such conditions may include, but are not limited to—

(i) Agreement by the permittee or another party to perform reclamation operations in accordance with a compliance schedule which meets the conditions of the permit, the reclamation plan, and the regulatory program and a demonstration that such party has the ability to satisfy the conditions; or

(ii) The regulatory authority may allow a surety to complete the reclamation plan, or the portion of the reclamation plan applicable to the bonded phase or increment, if the surety can demonstrate an ability to complete the reclamation in accordance with the approved reclamation plan. Except where the regulatory authority may approve partial release authorized under § 800.40, no surety liability shall be released until successful completion of all reclamation under the terms of the permit, including applicable liability periods of § 800.13.

(b) In the event forfeiture of the bond is required by this section, the regulatory authority shall—

(1) Proceed to collect the forfeited amount as provided by applicable laws for the collection of defaulted bonds or other debts if actions to avoid forfeiture have not been taken, or if rights of appeal, if any, have not been exercised within a time established by the regulatory authority, or if such appeal, if taken, is unsuccessful.

(2) Use funds collected from bond forfeiture to complete the reclamation plan, or portion thereof, on the permit area or increment, to which bond coverage applies.

(c) Upon default, the regulatory authority may cause the forfeiture of any and all bonds deposited to complete reclamation for which the bonds were posted. Unless specifically limited, as provided in § 800.11(b), bond liability shall extend to the entire permit area under conditions of forfeiture.

(d)(1) In the event the estimated amount forfeited is insufficient to pay for the full cost of reclamation, the operator shall be liable for remaining costs. The regulatory authority may complete, or authorize completion of, reclamation of the bonded area and may recover from the operator all costs of reclamation in excess of the amount forfeited.

(2) In the event the amount of performance bond forfeited was more than the amount necessary to complete reclamation, the unused funds shall be returned by the regulatory authority to the party from whom they were collected.

[48 FR 32959, July 19, 1983, as amended at 48 FR 44780, Sept. 30, 1983]

§ 800.60 Terms and conditions for liability insurance.

(a) The regulatory authority shall require the applicant to submit as part of its permit application a certificate issued by an insurance company authorized to do business in the United States certifying that the applicant has a public liability insurance policy in force for the surface coal mining and reclamation operations for which the permit is sought. Such policy shall provide for personal injury and property damage protection in an amount adequate to compensate any persons injured or property damaged as a result of the surface coal mining and reclamation operations, including the use of explosives, and who are entitled to compensation under the applicable provisions of State law. Minimum insurance coverage for bodily injury and property damage shall be $300,000 for each occurrence and $500,000 aggregate.

(b) The policy shall be maintained in full force during the life of the permit or any renewal thereof, including the liability period necessary to complete all reclamation operations under this chapter.

(c) The policy shall include a rider requiring that the insurer notify the regulatory authority whenever substantive changes are made in the policy including any termination or failure to renew.

(d) The regulatory authority may accept from the applicant, in lieu of a certificate for a public liability insurance policy, satisfactory evidence from the applicant that it satisfies applicable State self-insurance requirements approved as part of the regulatory program and the requirements of this section.

§ 800.70 Bonding for anthracite operations in Pennsylvania.

(a) All of the provisions of this Subchapter shall apply to bonding and insuring anthracite surface coal mining and reclamation operations in Pennsylvania except that—

(1) Specified bond limits shall be determined by the regulatory authority in accordance with applicable provisions of Pennsylvania statutes, rules and regulations promulgated thereunder, and implementing policies of the Pennsylvania Department of Environmental Resources.

(2) The period of liability for responsibility under each bond shall be established for those operations in accordance with applicable laws of the State of Pennsylvania, rules and regulations promulgated thereunder, and implementing policies of the Pennsylvania Department of Environmental Resources.

(b) Upon amendment of the Pennsylvania permanent regulatory program with respect to specified bond limits and period of revegetation responsibility for anthracite surface coal mining and reclamation operations, any person engaging in or seeking to engage in those operations shall comply with additional regulations the Secretary may issue as are necessary to meet the purposes of the Act.

SUBCHAPTER K—PERMANENT PROGRAM PERFORMANCE STANDARDS

PART 810—PERMANENT PROGRAM PERFORMANCE STANDARDS—GENERAL PROVISIONS

Sec.
810.1 Scope.
810.2 Objective.
810.3 Authority.
810.4 Responsibility.
810.11 Applicability.

AUTHORITY: Secs. 102, 201, 501(b), 503, 504, 505, 512, 515, 516 and 517, Pub. L. 95-87, 91 Stat. 448, 449, 468, 470, 471, 473, 483, 486, 495, and 498 (30 U.S.C. 1202, 1211, 1251, 1253, 1254, 1255, 1262, 1265, 1266, and 1267).

SOURCE: 44 FR 15393, Mar. 13, 1979, unless otherwise noted.

§ 810.1 Scope.

This subchapter sets forth the minimum performance standards and design requirements to be adopted and implemented under a regulatory program for coal exploration and surface coal mining and reclamation operations.

§ 810.2 Objective.

The objective of this subchapter is to ensure that coal exploration and surface coal mining and reclamation operations are conducted in manners which are compatible with the environmental, social, and esthetic needs of the Nation. Accordingly, the performance standards and design requirements in this subchapter will provide for—

(a) Protection of the health, safety, and general welfare of mine workers and the public;

(b) Maximum use and conservation of the solid fuel resource being recovered so that reaffecting the land through future surface coal mining operations can be minimized;

(c) Prompt reclamation of all affected areas to conditions that are capable of supporting the premining land uses or higher or better land uses;

(d) Reclamation of land affected by surface coal mining operations as contemporaneously as practicable with mining operations;

(e) Minimizing, to the extent possible using the best technology currently available, disturbances and adverse impacts on fish, wildlife, and other related environmental values, and enhancement of such resources where practicable;

(f) Revegetation which achieves a prompt vegetative cover and recovery of productivity levels compatible with approved land uses;

(g) Minimum disturbance to the prevailing hydrologic balance at the minesite and in associated off-site areas, and to the quality and quantity of water in surface and ground water systems;

(h) Protection of fragile and historic lands where surface coal mining operations could result in significant damage to important historic, cultural, scientific, or esthetic values and natural systems;

(i) Confinement of surface coal mining and reclamation operations including, but not limited to, the location of spoil disposal areas to lands within the permit area; and

(j) Striking a balance between protection of the environment and agricultural productivity and the Nation's need for coal as an essential source of energy.

(k) Protection of endangered and threatened species and their critical habitats as determined by the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

§ 810.3 Authority.

The Secretary shall approve and promulgate minimum coal exploration and surface mining and reclamation operations performance standards and design requirements applicable under regulatory programs which are at least as stringent as Subchapter K in accordance with Subchapter C of this chapter.

§ 810.4 Responsibility.

(a) The Director shall ensure that performance standards and design requirements at least as stringent as the standards of this subchapter are implemented and enforced under every regulatory program.

(b) The State regulatory authority shall ensure that performance standards and design requirements at least as stringent as the standards in this subchapter are implemented and enforced under every State program.

(c) Each person conducting coal exploration or surface coal mining and reclamation operations is responsible for complying with performance standards and design requirements which are at least as stringent as the standards in this subchapter and the applicable regulatory program.

§ 810.11 Applicability.

Part 815 applies to all coal exploration conducted under regulatory programs. Part 816 applies to all surface mining activities conducted under regulatory programs. Part 817 applies to all underground mining activities conducted under regulatory programs. Parts 818 through 828 apply to certain special categories of surface coal mining and reclamation operations. Parts 816 and 817 apply to each of those special categories of operations, except to the extent that a provision of Parts 818 through 828 specifically exempts a particular category from a particular requirement of Part 816 or Part 817.

PART 815—PERMANENT PROGRAM PERFORMANCE STANDARDS—COAL EXPLORATION

Sec.

815.1 Scope and purpose.
815.13 Required documents.
815.15 Performance standards for coal exploration.

AUTHORITY: Pub. L. 95-87, 30 U.S.C. 1201 *et seq.*

SOURCE: 48 FR 40636, Sept. 8, 1983, unless otherwise noted.

§ 815.1 Scope and purpose.

This part sets forth performance standards required for coal exploration which substantially disturbs the natural land surface. At the discretion of the regulatory authority, coal exploration operations may be further required to comply with the applicable standards of 30 CFR Parts 816 through 828.

§ 815.13 Required documents.

Each person who conducts coal exploration which substantially disturbs the natural land surface shall, while in the exploration area, have available a copy of the filed notice of intention to explore or a copy of the exploration permit for review by the authorized representative of the regulatory authority upon request.

§ 815.15 Performance standards for coal exploration.

(a) Habitats of unique or unusually high value for fish, wildlife, and other related environmental values and critical habitats of threatened or endangered species identified pursuant to the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*) shall not be disturbed during coal exploration.

(b) All roads or other transportation facilities used for coal exploration shall comply with the applicable provisions of §§ 816.150, 816.151, 816.180 and 816.181 of this chapter.

(c) If excavations, artificially flat areas, or embankments are created during exploration, these areas shall be returned to the approximate original contour promptly after such features are no longer needed for coal exploration.

(d) Topsoil shall be separately removed, stored, and redistributed on areas disturbed by coal exploration activities as necessary to assure successful revegetation or as required by the regulatory authority.

(e) All areas disturbed by coal exploration activities shall be revegetated in a manner that encourages prompt revegetation and recovery of a diverse, effective, and permanent vegetative cover. Revegetation shall be accomplished in accordance with the following:

(1) All areas disturbed by coal exploration activities shall be seeded or planted to the same seasonal variety native to the areas disturbed. If the land use of the exploration area is intensive agriculture, planting of the crops normally grown will meet the requirements of this paragraph.

(2) The vegetative cover shall be capable of stabilizing the soil surface from erosion.

(f) Diversions of overland flows and ephemeral, perennial, or intermittent streams shall be made in accordance with § 816.43 of this chapter.

(g) Each exploration hole, borehole, well, or other exposed underground opening created during exploration shall be reclaimed in accordance with §§ 816.13 through 816.15 of this chapter.

(h) All facilities and equipment shall be promptly removed from the exploration area when they are no longer needed for exploration, except for those facilities and equipment that the regulatory authority determines may remain to—

(1) Provide additional environmental data,

(2) Reduce or control the onsite and offsite effects of the exploration activities, or

(3) Facilitate future surface mining and reclamation operations by the person conducting the exploration.

(i) Coal exploration shall be conducted in a manner which minimizes disturbance of the prevailing hydrologic balance in accordance with §§ 816.41 through 816.49 of this chapter. The regulatory authority may specify additional measures which shall be adopted by the person engaged in coal exploration.

(j) Acid- or toxic-forming materials shall be handled and disposed of in accordance with §§ 816.41(b), 816.41(f), and 816.102(e) of this chapter. The regulatory authority may specify additional measures which shall be adopted by the person engaged in coal exploration.

PART 816—PERMANENT PROGRAM PERFORMANCE STANDARDS—SURFACE MINING ACTIVITIES

Sec.
816.1 Scope.
816.2 Objectives.
816.10 Information collection.
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Authority: Pub. L. 95-87, 91 Stat. 445 (30 U.S.C. 1201 *et seq.*) and sec. 115, Pub. L. 98-146, 97 Stat. 938 (30 U.S.C. 1257).

Source: 44 FR 15395, Mar. 13, 1979, unless otherwise noted.

§ 816.1 Scope.

This part sets forth the minimum environmental protection performance standards to be adopted and implemented under regulatory programs for surface mining activities.

§ 816.2 Objectives.

This part is intended to ensure that all surface mining activities are conducted in a manner which preserves and enhances environmental and other values in accordance with the Act.

§ 816.10 Information collection.

The information collection requirements contained in 30 CFR 816.46(c)(4), 816.46(r), 816.46(t), 816.49(h), 816.49(i), 816.52(a), 816.52(b)(1) (ii) and (iii), 816.53(a), 816.62, 816.64, 816.65(a)(2)(iii), 816.67, 816.68, 816.71(j), 816.82(a)(4), 816.82(b), 816.87, 816.91(b), 816.95, 816.116, 816.117(b)(4), 816.117(c) (1) and (3), 816.131(b), 816.133(c) (1) thru (4), 816.133(c) (8) and (9), 816.150(d)(1), 816.152(d)(13), 816.160(d)(1) and 816.163(d) have been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned clearance number 1029-0047. The information is being collected to meet the requirements of section 515 of Pub. L. 95-87, which provides that permittees conducting surface coal mining operations shall meet applicable performance standards of the Act. This information will be used by the regulatory authority in monitoring and inspecting surface mining activities. The obligation to respond is mandatory.

[47 FR 33687, Aug. 4, 1982]

§ 816.11 Signs and markers.

(a) *Specifications.* Signs and markers required under this part shall—

(1) Be posted and maintained by the person who conducts the surface mining activities;

(2) Be of a uniform design throughout the operation that can be easily seen and read;

(3) Be made of durable material; and

(4) Conform to local ordinances and codes.

(b) *Duration of maintenance.* Signs and markers shall be maintained during the conduct of all activities to which they pertain.

(c) *Mine and permit identification signs.* (1) Identification signs shall be displayed at each point of access to the permit area from public roads.

(2) Signs shall show the name, business address, and telephone number of the person who conducts the surface mining activities and the identification number of the current permit authorizing surface mining activities.

(3) Signs shall be retained and maintained until after the release of all bonds for the permit area.

(d) *Perimeter markers.* The perimeter of a permit area shall be clearly marked before the beginning of surface mining activities.

(e) *Buffer zone markers.* Buffer zones shall be marked along their boundaries as required under § 816.57.

(f) *Topsoil markers.* Where topsoil or other vegetation-supporting material is segregated and stockpiled as required under § 816.22, the stockpiled material shall be clearly marked.

[44 FR 15395, Mar. 13, 1979, as amended at 48 FR 9806, Mar. 8, 1983; 48 FR 44780, Sept. 30, 1983]

§ 816.13 Casing and sealing of drilled holes: General requirements.

Each exploration hole, other drill or borehole, well, or other exposed underground opening shall be cased, sealed, or otherwise managed, as approved by the regulatory authority, to prevent acid or other toxic drainage from entering ground or surface waters, to minimize disturbance to the prevailing hydrologic balance, and to ensure the safety of people, livestock, fish and wildlife, and machinery in the permit area and adjacent area. If these openings are uncovered or exposed by surface mining activities within the permit area they shall be permanently closed, unless approved for water monitoring, or otherwise managed in a manner approved by the regulatory authority. Use of a drilled hole or borehole or monitoring well as a water well must meet the provisions of § 816.41 of this part. This section does not apply to holes solely drilled and used for blasting.

[44 FR 15395, Mar. 13, 1979, as amended at 48 FR 14822, Apr. 5, 1983; 48 FR 43990, Sept. 26, 1983]

§ 816.14 Casing and sealing of drilled holes: Temporary.

Each exploration hole, other drill or boreholes, wells and other exposed underground openings which have been identified in the approved permit application for use to return coal processing waste or water to underground workings, or to be used to monitor ground water conditions, shall be temporarily sealed before use and protected during use by barricades, or fences, or other protective devices approved by the regulatory authority. These devices shall be periodically inspected and maintained in good operating condition by the person who conducts the surface mining activities.

[44 FR 15395, Mar. 13, 1979; 44 FR 49686, Aug. 24, 1979]

§ 816.15 Casing and sealing of drilled holes: Permanent.

When no longer needed for monitoring or other use approved by the regulatory authority upon a finding of no adverse environmental or health and safety effect, or unless approved for transfer as a water well under § 816.41, each exploration hole, other drilled hole or borehole, well, and other exposed underground opening shall be capped, sealed, backfilled, or otherwise properly managed, as required by the regulatory authority, under § 816.13 and consistent with 30 CFR 75.1711. Permanent closure measures shall be designed to prevent access to the mine workings by people, livestock, fish and wildlife, and machinery, and to keep acid or other toxic drainage from entering ground or surface waters.

[44 FR 15395, Mar. 13, 1979, as amended at 48 FR 43990, Sept. 26, 1983]

§ 816.22 Topsoil and subsoil.

(a) *Removal.* (1)(i) All topsoil shall be removed as a separate layer from the area to be disturbed, and segregated.

(ii) Where the topsoil is of insufficient quantity or poor quality for sustaining vegetation, the materials approved by the regulatory authority in accordance with paragraph (b) of this section shall be removed as a separate layer from the area to be disturbed, and segregated.

(2) If topsoil is less than 6 inches thick, the operator may remove the topsoil and the unconsolidated materials immediately below the topsoil and treat the mixture as topsoil.

(3) The regulatory authority may choose not to require the removal of topsoil for minor disturbances which—

(i) Occur at the site of small structures, such as power poles, signs, or fence lines; or

(ii) Will not destroy the existing vegetation and will not cause erosion.

(4) *Timing.* All material to be removed under this section shall be removed after the vegetative cover that would interfere with its salvage is cleared from the area to be disturbed, but before any drilling, blasting, mining, or other surface disturbance takes place.

(b) *Substitutes and supplements.* Selected overburden materials may be substituted for, or used as a supplement to topsoil if the operator demonstrates to the regulatory authority that the resulting soil medium is equal to, or more suitable for sustaining vegetation than, the existing topsoil, and the resulting soil medium is the best available in the permit area to support revegetation.

(c) *Storage.* (1) Materials removed under paragraph (a) of this section shall be segregated and stockpiled when it is impractical to redistribute such materials promptly on regraded areas.

(2) Stockpiled materials shall—

(i) Be selectively placed on a stable site within the permit area;

(ii) Be protected from contaminants and unnecessary compaction that would interfere with revegetation;

(iii) Be protected from wind and water erosion through prompt establishment and maintenance of an effective, quick growing vegetative cover or through other measures approved by the regulatory authority; and

(iv) Not be moved until required for redistribution unless approved by the regulatory authority.

(3) Where long-term surface disturbances will result from facilities such as support facilities and preparation plants and where stockpiling of materials removed under paragraph (a)(1) of this section would be detrimental to the quality or quantity of those materials, the regulatory authority may approve the temporary distribution of the soil materials so removed to an approved site within the permit area to enhance the current use of that site until needed for later reclamation, provided that—

(i) Such action will not permanently diminish the capability of the topsoil of the host site; and

(ii) The material will be retained in a condition more suitable for redistribution than if stockpiled.

(d) *Redistribution.* (1) Topsoil materials removed under paragraph (a) of this section shall be redistributed in a manner that—

(i) Achieves an approximately uniform, stable thickness consistent with the approved postmining land use, contours, and surface-water drainage systems;

(ii) Prevents excess compaction of the materials; and

(iii) Protects the materials from wind and water erosion before and after seeding and planting.

(2) Before redistribution of the material removed under paragraph (a) of this section the regraded land shall be treated if necessary to reduce potential slippage of the redistributed material and to promote root penetration. If no harm will be caused to the redistributed material and reestablished vegetation, such treatment may be conducted after such material is replaced.

(3) The regulatory authority may choose not to require the redistribution of topsoil or topsoil substitutes on the approved postmining embankments of permanent impoundments or of roads if it determines that—

(i) Placement of topsoil or topsoil substitutes on such embankments is inconsistent with the requirement to use the best technology currently available to prevent sedimentation, and

(ii) Such enbankments will be otherwise stabilized.

(4) *Nutrients and soil amendments.* Nutrients and soil amendments shall be applied to the initially redistributed material when necessary to establish the vegetative cover.

(e) *Subsoil segregation.* The regulatory authority may require that the B horizon, C horizon, or other underlying strata, or portions thereof, be removed and segrgated, stockpiled, and redistributed as subsoil in accordance with the requirements of paragraphs (c) and (d) of this section if it finds that such subsoil layers are necessary to comply with the revegetation requirements of §§ 816.111, 816.113, 816.114, and 816.116 of this chapter.

[48 FR 22100, May 16, 1983]

§ 816.41 Hydrologic-balance protection.

(a) *General.* All surface mining and reclamation activities shall be conducted to minimize disturbance of the hydrologic balance within the permit and adjacent areas, to prevent material damage to the hydrologic balance outside the permit area, to assure the protection or replacement of water rights, and to support approved postmining land uses in accordance with the terms and conditions of the approved permit and the performance standards of this part. The regulatory authority may require additional preventative, remedial, or monitoring measures to assure that material damage to the hydrologic balance outside the permit area is prevented. Mining and reclamation practices that minimize water pollution and changes in flow shall be used in preference to water treatment.

(b) *Ground-water protection.* In order to protect the hydrologic balance, surface mining activities shall be conducted according to the plan approved under § 780.21(h) of this chapter and the following:

(1) Ground-water quality shall be protected by handling earth materials and runoff in a manner that minimizes acidic, toxic, or other harmful infiltration to ground-water systems and by managing excavations and other disturbances to prevent or control the discharge of pollutants into the ground water.

(2) Ground-water quantity shall be protected by handling earth materials and runoff in a manner that will restore the approximate premining recharge capacity of the reclaimed area as a whole, excluding coal mine waste disposal areas and fills, so as to allow the movement of water to the ground-water system.

(c) *Ground-water monitoring.* (1) Ground-water monitoring shall be conducted according to the ground-water monitoring plan approved under § 780.21(i) of this chapter. The regulatory authority may require additional monitoring when necessary.

(2) Ground-water monitoring data shall be submitted every 3 months to the regulatory authority or more frequently as prescribed by the regulatory authority. Monitoring reports shall include analytical results from each sample taken during the reporting period. When the analysis of any ground-water sample indicates noncompliance with the permit conditions, then the operator shall promptly notify the regulatory authority and immediately take the actions provided for in §§ 773.17(e) and 780.21(h) of this chapter.

(3) Ground-water monitoring shall proceed through mining and continue during reclamation until bond release. Consistent with the procedures of § 774.13 of this chapter, the regulatory authority may modify the monitoring requirements, including the parameters covered and the sampling frequency, if the operator demonstrates, using the monitoring data obtained under this paragraph, that—

(i) The operation has minimized disturbance to the hydrologic balance in the permit and adjacent areas and prevented material damage to the hydrologic balance outside the permit area; water quantity and quality are suitable to support approved postmining land uses; and the water rights of other users have been protected or replaced; or

(ii) Monitoring is no longer necessary to achieve the purposes set forth in the monitoring plan approved under § 780.21(i) of this chapter.

(4) Equipment, structures, and other devices used in conjuction with monitoring the quality and quantity of ground water onsite and offsite shall be properly installed, maintained, and operated and shall be removed by the operator when no longer needed.

(d) *Surface-water protection.* In order to protect the hydrologic balance, surface mining activities shall be conducted according to the plan approved under § 780.21(h) of this chapter, and the following:

(1) Surface-water quality shall be protected by handling earth materials, ground-water discharges, and runoff in a manner that minimizes the formation of acidic or toxic drainage; prevents, to the extent possible using the best technology currently available, additional contribution of suspended solids to streamflow outside the permit area; and otherwise prevents water pollution. If drainage control, restabilization and revegetation of disturbed areas, diversion of runoff, mulching, or other reclamation and remedial practices are not adequate to meet the requirements of this section and § 816.42, the operator shall use and maintain the necessary water-treatment facilities or water quality controls.

(2) Surface-water quality and flow rates shall be protected by handling earth materials and runoff in accordance with the steps outlined in the plan approved under § 780.21(h) of this chapter.

(e) *Surface-water monitoring.* (1) Surface-water monitoring shall be conducted according to the surface-water monitoring plan approved under § 780.21(j) of this chapter. The regulatory authority may require additional monitoring when necessary.

(2) Surface-water monitoring data shell be submitted every 3 months to the regulatory authority or more frequently as prescribed by the regulatory authority. Monitoring reports shall include analytical results from each sample taken during the reporting period. When the analysis of any surface-water sample indicates noncompliance with the permit conditions, the operator shall promptly notify the regulatory authority and immediately take the actions provided for in §§ 773.17(e) and 780.21(h) of this chapter. The reporting requirements of this paragraph do not exempt the operator from meeting any National Pollutant Discharge Elimination System (NPDES) reporting requirements.

(3) Surface-water monitoring shall proceed through mining and continue during reclamation until bond release. Consistent with § 774.13 of this chapter, the regulatory authority may modify the monitoring requirements, except those required by the NPDES permitting authority, including the parameters covered and sampling frequency if the operator demonstrates, using the monitoring data obtained under this paragraph, that—

(i) The operation has minimized disturbance to the hydrologic balance in the permit and adjacent areas and prevented material damage to the hydrologic balance outside the permit area; water quantity and quality are suitable to support approved postmining land uses; and the water rights of other users have been protected or replaced; or

(ii) Monitoring is no longer necessary to achieve the purposes set forth in the monitoring plan approved under § 780.21(j) of this chapter.

(4) Equipment, structures, and other devices used in conjunction with monitoring the quality and quantity of surface water onsite and offsite shall be properly installed, maintained, and operated and shall be removed by the operator when no longer needed.

(f) *Acid- and toxic-forming materials.* (1) Drainage from acid- and toxic-forming materials into surface water and ground water shall be avoided by—

(i) Identifying and burying and/or treating, when necessary, materials which may adversely affect water quality, or be detrimental to vegetation or to public health and safety if not buried and/or treated, and

(ii) Storing materials in a manner that will protect surface water and ground water by preventing erosion, the formation of polluted runoff, and the infiltration of polluted water. Storage shall be limited to the period until burial and/or treatment first become feasible, and so long as storage will not result in any risk of water pollution or other environmental damage.

(2) Storage, burial or treatment practices shall be consistent with other material handling and disposal provisions of this chapter.

(g) *Transfer of wells.* Before final release of bond, exploratory or monitoring wells shall be sealed in a safe and environmentally sound manner in accordance with §§ 816.13 to 816.15. With the prior approval of the regulatory authority, wells may be transferred to another party for further use. At a minimum, the conditions of such transfer shall comply with State and local law and the permittee shall remain responsible for the proper management of the well until bond release in accordance with §§ 816.13 to 816.15.

(h) *Water rights and replacement.* Any person who conducts surface mining activities shall replace the water supply of an owner of interest in real property who obtains all or part of his or her supply of water for domestic, agricultural, industrial, or other legitimate use from an underground or surface source, where the water supply has been adversely impacted by contamination, diminution, or interruption proximately resulting from the surface mining activities. Baseline hydrologic information required in §§ 780.21 and 780.22 of this chapter shall be used to determine the extent of the impact of mining upon ground water and surface water.

(i) *Discharges into an underground mine.* (1) Discharges into an underground mine are prohibited, unless specifically approved by the regulatory authority after a demonstration that the discharge will—

(i) Minimize disturbance to the hydrologic balance on the permit area, prevent material damage outside the permit area and otherwise eliminate public hazards resulting from surface mining activities;

(ii) Not result in a violation of applicable water quality standards or effluent limitations;

(iii) Be at a known rate and quality which shall meet the effluent limitations of § 816.42 for pH and total suspended solids, except that the pH and total suspended-solids limitations may be exceeded, if approved by the regulatory authority; and

(iv) Meet with the approval of the Mine Safety and Health Administration.

(2) Discharges shall be limited to the following:

(i) Water;

(ii) Coal processing waste;

(iii) Fly ash from a coal-fired facility;

(iv) Sludge from an acid-mine-drainage treatment facility;

(v) Flue-gas desulfurization sludge;

(vi) Inert materials used for stabilizing underground mines; and

(vii) Underground mine development wastes.

[48 FR 43990, Sept. 26, 1983]

§ 816.42 Hydrologic balance: Water quality standards and effluent limitations.

Discharges of water from areas disturbed by surface mining activities shall be made in compliance with all applicable State and Federal water quality laws and regulations and with the effluent limitations for coal mining promulgated by the U.S. Environmental Protection Agency set forth in 40 CFR Part 434.

[47 FR 47222, Oct. 22, 1982, as amended at 48 FR 44051, Sept. 26, 1983]

§ 816.43 Diversions.

(a) *General requirements.* (1) With the approval of the regulatory authority, any flow from mined areas abandoned before May 3, 1978, and any flow from undisturbed areas or reclaimed areas, after meeting the criteria of § 816.46 for siltation structure removal, may be diverted from disturbed areas by means of temporary or permanent diversions. All diversions shall be designed to minimize adverse impacts to the hydrologic balance within the permit and adjacent areas, to prevent material damage outside the permit area and to assure the safety of the public. Diversions shall not be used to divert water into underground mines without approval of the regulatory authority under § 816.41(i).

(2) The diversion and its appurtenant structures shall be designed, located, constructed, maintained and used to—

(i) Be stable;

(ii) Provide protection against flooding and resultant damage to life and property;

(iii) Prevent, to the extent possible using the best technology currently available, additional contributions of suspended solids to streamflow outside the permit area; and

(iv) Comply with all applicable local, State, and Federal laws and regulations.

(3) Temporary diversions shall be removed promptly when no longer needed to achieve the purpose for which they were authorized. The land disturbed by the removal process shall be restored in accordance with this part. Before diversions are removed, downstream water-treatment facilities previously protected by the diversion shall be modified or removed, as necessary, to prevent overtopping or failure of the facilities. This requirement shall not relieve the operator from maintaining water-treatment facilities as otherwise required. A permanent diversion or a stream channel reclaimed after the removal of a temporary diversion shall be designed and constructed so as to restore or approximate the premining characteristics of the original stream channel including the natural riparian vegetation to promote the recovery and the enhancement of the aquatic habitat.

(4) The regulatory authority may specify design criteria for diversions to meet the requirements of this section.

(b) *Diversion of perennial and intermittent streams.* (1) Diversion of perennial and intermittent streams within the permit area may be approved by the regulatory authority after making the finding relating to stream buffer zones that the diversion will not adversely affect the water quantity and quality and related environmental resources of the stream.

(2) The design capacity of channels for temporary and permanent stream channel diversions shall be at least equal to the capacity of the unmodified stream channel immediately upstream and downstream from the diversion.

(3) The requirements of paragraph (a)(2)(ii) of this section shall be met when the temporary and permanent diversions for perennial and intermittent streams are designed so that the combination of channel, bank and flood-plain configuration is adequate to pass safely the peak runoff of a 10-year, 6-hour precipitation event for a temporary diversion and a 100-year, 6-hour precipitation event for a permanent diversion.

(4) The design and construction of all stream channel diversions of perennial and intermittent streams shall be certified by a qualified registered professional engineer as meeting the performance standards of this part and any design criteria set by the regulatory authority.

(c) *Diversion of miscellaneous flows.* (1) Miscellaneous flows, which consist of all flows except for perennial and intermittent streams, may be diverted away from disturbed areas if required or approved by the regulatory authority. Miscellaneous flows shall include ground-water discharges and ephemeral streams.

(2) The design, location, construction, maintenance, and removal of diversions of miscellaneous flows shall meet all of the performance standards set forth in paragraph (a) of this section:

(3) The requirements of paragraph (a)(2)(ii) of this section shall be met when the temporary and permanent diversions for miscellaneous flows are designed so that the combination of channel, bank and flood-plain configuration is adequate to pass safely the peak runoff of a 2-year, 6-hour precipitation event for a temporary diversion and a 10-year, 6-hour precipitation event for a permanent diversion.

[48 FR 43991, Sept. 26, 1983]

§ 816.45 Hydrologic balance: Sediment control measures.

(a) Appropriate sediment control measures shall b pdesigned, constructed, and maintained using the best technology currently available to:

(1) Prevent, to the extent possible, additional contributions of sediment to streamflow or to runoff outside the permit area,

(2) Meet the more stringent of applicable State or Federal effluent limitations,

(3) Minimize erosion to the extent possible.

(b) Sediment control measures include practices carried out within and adjacent to the disturbed area. The sedimentation storage capacity of bractices in and downstream from the disturbed area shall reflect the degree to which successful mining and reclamation techniques are applied to reduce erosion and control sediment. Sediment control measures consist of the utilization of proper mining and reclamation methods and sediment control practices, singly or in combination. Sediment control methods include but are not limited to —

(1) Disturbing the smallest practicable area at any one time during the mining operation through progressive backfilling, grading, and prompt revegetation as required in § 816.111(b);

(2) Stabilizing the backfill material to promote a reduction in the rate and volume of runoff, in accordance with the requirements of § 816.102;

(3) Retaining sediment within disturbed areas;

(4) Diverting runoff away from disturbed areas;

(5) Diverting runoff using protected channels or pipes through disturbed areas so as not to cause additional erosion;

(6) Using straw dikes, riprap, check dams, mulches, vegetative sediment filters, dugout ponds, and other measures that reduce overland flow velocity, reduce runoff volume, or trap sediment; and

(7) Treating with chemicals.

[44 FR 15395, Mar. 13, 1979, as amended at 48 FR 44780, Sept. 30, 1983]

§ 816.46 Hydrologic balance: Siltation structures.

(a) *Definitions.* For the purposes of this section only:

(1) *Siltation structure* means a sedimentation pond, a series of sedimentation ponds, or other treatment facility.

(2) *Disturbed area* shall not include those areas—

(i) In which the only surface mining activities include diversion ditches, siltation structures, or roads that are designed, constructed and maintained in accordance with this part; and

(ii) For which the upstream area is not otherwise disturbed by the operator.

(3) *Other treatment facilities* means any chemical treatments, such as flocculation, or mechanical structures, such as clarifiers, that have a point-source discharge and that are utilized to prevent additional contribution of suspended solids to streamflow or runoff outside the permit area.

(b) *General requirements.* (1) Additional contributions of suspended solids sediment to streamflow or runoff outside the permit area shall be prevented to the extent possible using the best technology currently available.

(2) All surface drainage from the disturbed area shall be passed through a siltation structure before leaving the permit area, except as provided in paragraph (b)(5) or (e) of this section.

(3) Siltation structures for an area shall be constructed before beginning any surface mining activities in that area and, upon construction, shall be certified by a qualified registered professional engineer to be constructed as designed and as approved in the reclamation plan.

(4) Any siltation structure which impounds water shall be designed, constructed and maintained in accordance with § 816.49 of this chapter.

(5) Siltation structures shall be maintained until removal is authorized by the regulatory authority and the disturbed area has been stabilized and revegetated. In no case shall the structure be removed sooner than 2 years after the last augmented seeding.

(6) When siltation structure is removed, the land on which the siltation structure was located shall be regraded and revegetated in accordance with the reclamation plan and §§ 816.111 through 816.116 of this chapter. Sedimentation ponds approved by the regulatory authority for retention as permanent impoundments may be exempted from this requirement.

(c) *Sedimentation ponds.* (1) When used, sedimentation ponds shall—

(i) Be used individually or in series;

(ii) Be located as near as possible to the disturbed area and out of perennial streams unless approved by the regulatory authority, and

(iii) Be designed, constructed, and maintained to—

(A) Provide adequate sediment storage volume;

(B) Provide adequate detention time to allow the effluent from the ponds to meet State and Federal effluent limitations;

(C) Contain or treat the 10-year, 24-hour precipitation event ("design event") unless a lesser design event is approved by the regulatory authority based on terrain, climate, other site-specific conditions and on a demonstration by the operator that the effluent limitations of § 816.42 will be met;

(D) Provide a nonclogging dewatering device adequate to maintain the detention time required under paragraph (c)(1)(iii)(B) of this section;

(E) Minimize, to the extent possible, short circuiting;

(F) Provide periodic sediment removal sufficient to maintain adequate volume for the design event;

(G) Ensure against excessive settlement;

(H) Be free of sod, large roots, frozen soil, and acid- or toxic-forming coal-processing waste; and

(I) Be compacted properly.

(2)(i) Sedimentation ponds meeting the size or other qualifying criteria of § 77.216(a) of this title shall comply with all the requirements of that section, and shall have principal and emergency spillways that in combination will safely pass a 100-year, 6-hour precipitation event.

(ii) Sedimentation ponds not meeting the size or other qualifying criteria of § 77.216(a) of the title shall provide a combination of principal and emergency spillways that will safely discharge a 25-year, 6-hour precipitation event. Such ponds may use a single spillway if the spillway (A) is an open channel of nonerodable construction and capable of maintaining sustained flows; and (B) is not earth- or grass-lined.

(d) *Other treatment facilities.* (1) Other treatment facilities shall be designed to treat the 10-year, 24-hour precipitation event unless a lesser design event is approved by the regulatory authority based on terrain, climate, other site-specific conditions and a demonstration by the operator that the effluent limitations of § 816.42 will be met.

(2) Other treatment facilities shall be designed in accordance with the applicable requirements of paragraph (c) of this section.

(e) *Exemptions.* Exemptions to the requirements of this section may be granted if—

(1) The disturbed drainage area within the total disturbed area is small; and

(2) The operator demonstrates that siltation structures and alternate sediment control measures are not necessary for drainage from the disturbed area to meet the effluent limitations under § 816.42 and the applicable State and Federal water quality standards for the receiving waters.

[48 FR 44051, Sept. 26, 1983]

§ 816.47 Hydrologic balance: Discharge structures.

Discharge from sedimentation ponds, permanent and temporary impoundments, coal processing waste dams and embankments, and diversions shall be controlled, by energy dissipators, riprap channels, and other devices, where necessary, to reduce erosion, to prevent deepening or enlargement of stream channels, and to minimize disturbance of the hydrologic balance. Discharge structures shall be designed according to standard engineering-design procedures.

§ 816.49 Impoundments.

(a) *General requirements.* The requirements of this paragraph apply to both temporary and permanent impoundments.

(1) Impoundments meeting the criteria of § 77.216(a) of this title shall comply with the requirements of § 77.216 of this title and this section. The plan required to be submitted to the District Manager of MSHA under § 77.216 of this title shall also be submitted to the regulatory authority as part of the permit application.

(2) *Design certification.* The design of impoundments shall be certified in accordance with § 780.25(a) of this chapter as designed to meet the requirements of this part using current, prudent, engineering practices and any design criteria established by the regulatory authority. The qualified, registered, professional engineer or qualified, registered, professional, land surveyor shall be experienced in the design and construction of impoundments.

(3) *Stability.* Impoundments shall have a minimum static safety factor of 1.5 for the normal pool with steady seepage saturation conditions, and a seismic safety factor of at least 1.2.

(4) *Freeboard.* Impoundments shall have adequate freeboard to resist overtopping by waves and by sudden increases in storage volume.

(5) *Foundation.* (i) Foundation and abutments for the impounding structure shall be designed to be stable under all conditions of construction and operation of the impoundment. Sufficient foundation investigations and laboratory testing shall be performed in order to determine the design requirements for foundation stability.

(ii) All vegetative and organic materials shall be removed and foundations excavated and prepared to resist failure. Cutoff trenches shall be installed if necessary to ensure stability.

(6) Slope protection shall be provided to protect against surface erosion at the site and protect against sudden drawdown.

(7) Faces of embankments and surrounding areas shall be vegetated, except that faces where water is impounded may be riprapped or otherwise stabilized in accordance with accepted design practices.

(8) Impoundments shall include a combination of principal and emergency spillways which shall be designed and constructed to safely pass the design precipitation event specified in paragraph (b) or (c) of this section.

(9) The vertical portion of any remaining highwall shall be located far enough below the low-water line along the full extent of highwall to provide adequate safety and access for the proposed water users.

(10) *Inspections.* A qualified registered professional engineer or other qualified professional specialist, under the direction of the professional engineer, shall inspect the impoundment. The professional engineer or specialist shall be experienced in the construction of impoundments.

(i) Inspections shall be made regularly during construction, upon completion of construction, and at least yearly until removal of the structure or release of the performance bond.

(ii) The qualified registered professional engineer shall promptly, after each inspection, provide to the regulatory authority a certified report that the impoundment has been constructed and maintained as designed and in accordance with the approved plan and this chapter. The report shall include discussion of any appearances of instability, structural weakness or other hazardous conditions, depth and elevation of any impounded waters, existing storage capacity, any existing or required monitoring procedures and instrumentation and any other aspects of the structure affecting stability.

(iii) A copy of the report shall be retained at or near the minesite.

(11) Impoundments subject to § 77.216 of this title must be examined in accordance with § 77.216-3 of this title. Other impoundments shall be examined at least quarterly by a qualified person designated by the operator for appearance of structural weakness and other hazardous conditions.

(12) *Emergency procedures.* If any examination or inspection discloses that a potential hazard exists, the person who examined the impoundment shall promptly inform the regulatory authority of the finding and of the emergency procedures formulated for public protection and remedial action. If adequate procedures cannot be formulated or implemented, the regulatory authority shall be notified immediately. The regulatory authority shall then notify the appropriate agencies that other emergency procedures are required to protect the public.

(b) *Permanent impoundments.* A permanent impoundment of water may be created, if authorized by the regulatory authority in the approved permit based upon the following demonstration:

(1) The size and configuration of such impoundment will be adequate for its intended purposes.

(2) The quality of impounded water will be suitable on a permanent basis for its intended use and, after reclamation, will meet applicable State and Federal water quality standards, and discharges from the impoundment will meet applicable effluent limitations and will not degrade the quality of receiving water below applicable State and Federal water quality standards.

(3) The water level will be sufficiently stable and be capable of supporting the intended use.

(4) Final grading will provide for adequate safety and access for proposed water users.

(5) The impoundment will not result in the diminution of the quality and quantity of water utilized by adjacent or surrounding landowners for agricultural, industrial, recreational, or domestic uses.

(6) The impoundment will be suitable for the approved postmining land use.

(7) The design precipitation event for the spillways for a permanent impoundment will be a 50-year, 6-hour precipitation event, or such larger event as the regulatory authority may require.

(c) *Temporary impoundments.* (1) The regulatory authority may authorize the construction of temporary impoundments as part of a surface coal mining operation.

(2) The design precipitation event for the spillways for a temporary impoundment is a 25-year, 6-hour precipitation event, or such larger event as the regulatory authority may require.

[48 FR 44004, Sept. 26, 1983, as amended at 50 FR 16200, Apr. 24, 1985]

§ 816.56 Postmining rehabilitation of sedimentation ponds, diversions, impoundments, and treatment facilities.

Before abandoning a permit area or seeking bond release, the operator shall ensure that all temporary structures are removed and reclaimed, and that all permanent sedimentation ponds, diversions, impoundments, and treatment facilities meet the requirements of this chapter for permanent structures, have been maintained properly, and meet the requirements of the approved reclamation plan for permanent structures and impoundments. The operator shall renovate such structures if necessary to meet the requirements of this chapter and to conform to the approved reclamation plan.

[48 FR 44005, Sept. 26, 1983]

§ 816.57 Hydrologic balance: Stream buffer zones.

(a) No land within 100 feet of a perennial stream or an intermittent stream shall be disturbed by surface mining activities, unless the regulatory authority specifically authorizes surface mining activities closer to, or through, such a stream. The regulatory authority may authorize such activities only upon finding that—

(1) Surface mining activities will not cause or contribute to the violation of applicable State or Federal water quality standards, and will not adversely affect the water quantity and quality or other environmental resources of the stream; and

(2) If there will be a temporary or permanent stream-channel diversion, it will comply with § 816.43.

(b) The area not to be disturbed shall be designated as a buffer zone, and the operator shall mark it as specified in § 816.11.

[48 FR 30327, June 30, 1983]

§ 816.59 Coal recovery.

Surface mining activities shall be conducted so as to maximize the utilization and conservation of the coal, while utilizing the best appropriate technology currently available to maintain environmental integrity, so that reaffecting the land in the future through surface coal mining operations is minimized.

§ 816.61 Use of explosives: General requirements.

(a) Each operator shall comply with all applicable State and Federal laws and regulations in the use of explosives.

(b) Blasts that use more than 5 pounds of explosive or blasting agent shall be conducted according to the schedule required under § 816.64.

(c) *Blasters.* (1) No later than 12 months after the blaster certification program for a State required by Part 850 of this chapter has been approved under the procedures of Subchapter C of this chapter, all blasting operations in that State shall be conducted under the direction of a certified blaster. Before that time, all such blasting operations in that State shall be conducted by competent, experienced persons who understand the hazards involved.

(2) Certificates of blaster certification shall be carried by blasters or shall be on file at the permit area during blasting operations.

(3) A blaster and at least one other person shall be present at the firing of a blast.

(4) Any blaster who is responsible for conducting blasting operations at a blasting site shall:

(i) Be familiar with the blasting plan and site-specific performance standards; and

(ii) Give direction and on-the-job training to persons who are not certified and who are assigned to the blasting crew or assist in the use of explosives.

(d) *Blast design.* (1) An anticipated blast design shall be submitted if blasting operations will be conducted within—

(i) 1,000 feet of any building used as a dwelling, public building, school, church, or community or institutional building outside the permit area; or

(ii) 500 feet of an active or abandoned underground mine.

(2) The blast design may be presented as part of a permit application or at

a time, before the blast, approved by the regulatory authority.

(3) The blast design shall contain sketches of the drill patterns, delay periods, and decking and shall indicate the type and amount of explosives to be used, critical dimensions, and the location and general description of structures to be protected, as well as a discussion of design factors to be used, which protect the pubic and meet the applicable airblast, flyrock, and ground-vibration standards in § 816.67.

(4) The blast design shall be prepared and signed by a certified blaster.

(5) The regulatory authority may require changes to the design submitted.

[48 FR 9492, Mar. 4, 1983, and 48 FR 9806, Mar. 8, 1983, as amended at 51 FR 19461, May 29, 1986]

§ 816.62 Use of explosives: Preblasting survey.

(a) At least 30 days before initiation of blasting, the operator shall notify, in writing, all residents or owners of dwellings or other structures located within ½ mile of the permit area how to request a preblasting survey.

(b) A resident or owner of a dwelling or structure within ½ mile of any part of the permit area may request a preblasting survey. This request shall be made, in writing, directly to the operator or to the regulatory authority, who shall promptly notify the operator. The operator shall promptly conduct a preblasting survey of the dwelling or structure and promptly prepare a written report of the survey. An updated survey of any additions, modifications, or renovations shall be performed by the operator if requested by the resident or owner.

(c) The operator shall determine the condition of the dwelling or structure and shall document any preblasting damage and other physical factors that could reasonably be affected by the blasting. Structures such as pipelines, cables, transmission lines, and cisterns, wells, and other water systems warrant special attention; however, the assessment of these structures may be limited to surface conditions and other readily available data.

(d) The written report of the survey shall be signed by the person who conducted the survey. Copies of the report shall be promptly provided to the regulatory authority and to the person requesting the survey. If the person requesting the survey disagrees with the contents and/or recommendations contained therein, he or she may submit to both the operator and the regulatory authority a detailed description of the specific areas of disagreement.

(e) Any surveys requested more than 10 days before the planned initiation of blasting shall be completed by the operator before the initiation of blasting.

[48 FR 9807, Mar. 8, 1983]

§ 816.64 Use of explosives: Blasting schedule.

(a) *General requirements.* (1) The operator shall conduct blasting operations at times approved by the regulatory authority and announced in the blasting schedule. The regulatory authority may limit the area covered, timing, and sequence of blasting as listed in the schedule, if such limitations are necessary and reasonable in order to protect the public health and safety or welfare.

(2) All blasting shall be conducted between sunrise and sunset, unless nighttime blasting is approved by the regulatory authority based upon a showing by the operator that the public will be protected from adverse noise and other impacts. The regulatory authority may specify more restrictive time periods for blasting.

(3) Unscheduled blasts may be conducted only where public or operator health and safety so require and for emergency blasting actions. When an operator conducts an unscheduled blast, the operator, using audible signals, shall notify residents within ½ mile of the blasting site and document the reason for the unscheduled blast in accordance with § 816.68(p).

(b) *Blasting schedule publication and distribution.* (1) The operator shall publish the blasting schedule in a newspaper of general circulation in the locality of the blasting site at least 10 days, but not more than 30 days, before beginning a blasting program.

(2) The operator shall distribute copies of the schedule to local govern-

ments and public utilities and to each local residence within ½ mile of the proposed blasting site described in the schedule.

(3) The operator shall republish and redistribute the schedule at least every 12 months and revise and republish the schedule at least 10 days, but not more than 30 days, before blasting whenever the area covered by the schedule changes or actual time periods for blasting significantly differ from the prior announcement.

(c) *Blasting schedule contents.* The blasting schedule shall contain, at a minimum—

(1) Name, address, and telephone number of operator;

(2) Identification of the specific areas in which blasting will take place;

(3) Dates and time periods when explosives are to be detonated;

(4) Methods to be used to control access to the blasting area; and

(5) Type and patterns of audible warning and all-clear signals to be used before and after blasting.

[48 FR 9807, Mar. 8, 1983]

§ 816.66 Use of explosives: Blasting signs, warnings, and access control.

(a) *Blasting signs.* Blasting signs shall meet the specifications of § 816.11. The operator shall—

(1) Conspicuously place signs reading "Blasting Area" along the edge of any blasting area that comes within 100 feet of any public road right-of-way, and at the point where any other road provides access to the blasting area; and

(2) At all entrances to the permit area from public roads or highways, place conspicuous signs which state "Warning! Explosives in Use," which clearly list and describe the meaning of the audible blast warning and all-clear signals that are in use, and which explain the marking of blasting areas and charged holes awaiting firing within the permit area.

(b) *Warnings.* Warning and all-clear signals of different character or pattern that are audible within a range of ½ mile from the point of the blast shall be given. Each person within the permit area and each person who resides or regularly works within ½ mile of the permit area shall be notified of the meaning of the signals in the blasting schedule.

(c) *Access control.* Access within the blasting area shall be controlled to prevent presence of livestock or unauthorized persons during blasting and until an authorized representative of the operator has reasonably determined that—

(1) No unusual hazards, such as imminent slides or undetonated charges, exist; and

(2) Access to and travel within the blasting area can be safely resumed.

[48 FR 9807, Mar. 8, 1983]

§ 816.67 Use of explosives: Control of adverse effects.

(a) *General requirements.* Blasting shall be conducted to prevent injury to persons, damage to public or private property outside the permit area, adverse impacts on any underground mine, and change in the course, channel, or availability of surface or ground water outside the permit area.

(b) *Airblast*—(1) *Limits.* (i) Airblast shall not exceed the maximum limits listed below at the location of any dwelling, public building, school, church, or community or institutional building outside the permit area, except as provided in paragraph (e) of this section.

Lower frequency limit of measuring system, in Hz (± 3 dB)	Maximum level, in dB
0.1 Hz or lower—flat response [1]	134 peak
2 Hz or lower—flat response	133 peak
6 Hz or lower—flat response	129 peak
C-weighted—slow response [1]	105 peak dBC

[1] Only when approved by the regulatory authority

(ii) If necessary to prevent damage, the regulatory authority shall specify lower maximum allowable airblast levels than those of paragraph (b)(1)(i) of this section for use in the vicinity of a specific blasting operation.

(2) *Monitoring.* (i) The operator shall conduct periodic monitoring to ensure compliance with the airblast standards. The regulatory authority may require airblast measurement of any or all blasts and may specify the

locations at which such measurements are taken.

(ii) The measuring systems shall have an upper-end flat-frequency response of at least 200 Hz.

(c) *Flyrock.* Flyrock travelling in the air or along the ground shall not be cast from the blasting site—

(1) More than one-half the distance to the nearest dwelling or other occupied structure;

(2) Beyond the area of control required under § 816.66(c); or

(3) Beyond the permit boundary.

(d) *Ground vibration*—(1) *General.* In all blasting operations, except as otherwise authorized in paragraph (e) of this section, the maximum ground vibration shall not exceed the values approved in the blasting plan required under § 780.13 of this chapter. The maximum ground vibration for protected structures listed in paragraph (d)(2)(i) of this section shall be established in accordance with either the maximum peak-particle-velocity limits of paragraph (d)(2), the scaled-distance equation of paragraph (d)(3), the blasting-level chart of paragraph (d)(4) of this section, or by the regulatory authority under paragraph (d)(5) of this section. All structures in the vicinity of the blasting area, not listed in paragraph (d)(2)(i) of this section, such as water towers, pipelines and other utilities, tunnels, dams, impoundments, and underground mines, shall be protected from damage by establishment of a maximum allowable limit on the ground vibration, submitted by the operator in the blasting plan and approved by the regulatory authority.

(2) *Maximum peak particle velocity.* (i) The maximum ground vibration shall not exceed the following limits at the location of any dwelling, public building, school, church, or community or institutional building outside the permit area:

Distance (*D*), from the blasting site, in feet	Maximum allowable peak particle velocity (*V*max) for ground vibration, in inches/second [1]	Scaled distance factor to be applied without seismic monitoring [2] (*Ds*)
0 to 300	1.25	50
301 to 5,000	1.00	55
5,001 and beyond	0.75	65

[1] Ground vibration shall be measured as the particle velocity. Particle velocity shall be recorded in three mutually perpendicular directions. The maximum allowable peak particle velocity shall apply to each of the three measurements.

[2] Applicable to the scaled-distance equation of paragraph (d)(3)(i) of this section.

(ii) A seismographic record shall be provided for each blast.

(3) *Scale-distance equation.* (i) An operator may use the scaled-distance equation, $W=(D/Ds)^2$, to determine the allowable charge weight of explosives to be detonated in any 8-millisecond period, without seismic monitoring; where W = the maximum weight of explosives, in pounds; D = the distance, in feet, from the blasting site to the nearest protected structure; and Ds = the scaled-distance factor, which may initially be approved by the regulatory authority using the values for scaled-distance factor listed in paragraph (d)(2)(i) of this section.

(ii) The development of a modified scaled-distance factor may be authorized by the regulatory authority on receipt of a written request by the operator, supported by seismographic records of blasting at the minesite. The modified scale-distance factor shall be determined such that the particle velocity of the predicted ground vibration will not exceed the prescribed maximum allowable peak particle velocity of paragraph (d)(2)(i) of this section, at a 95-percent confidence level.

(4) *Blasting-level chart.* (i) An operator may use the ground-vibration limits in Figure 1 to determine the maximum allowable ground vibration.

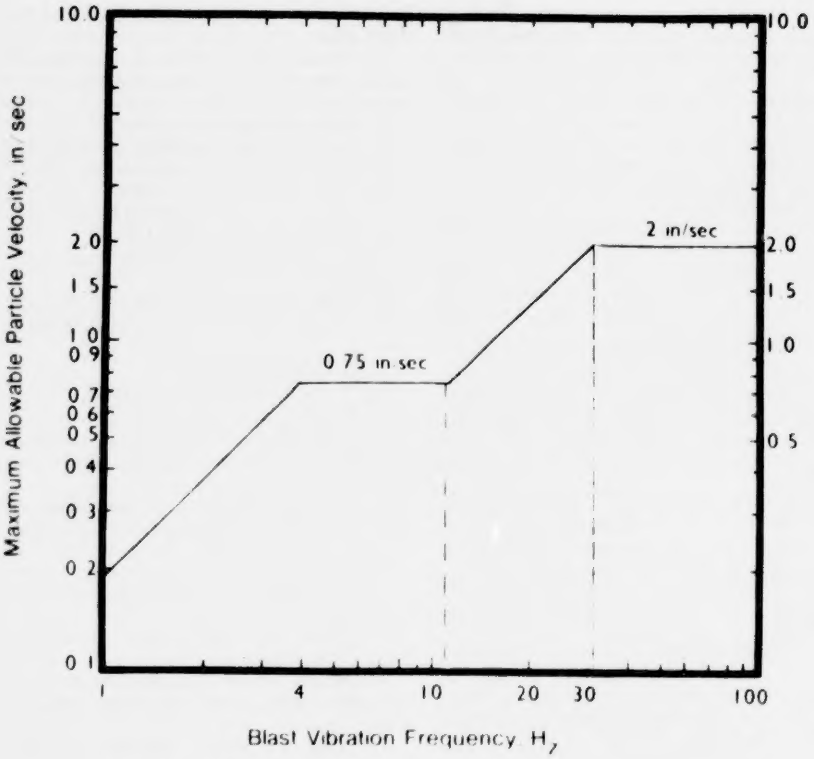

Figure 1 Alternative blasting level criteria

(Source: Modified from figure B-1, Bureau of Mines RI 8507)

(ii) If the Figure 1 limits are used, a seismographic record including both particle velocity and vibration-frequency levels shall be provided for each blast. The method for the analysis of the predominant frequency contained in the blasting records shall be approved by the regulatory authority before application of this alternative blasting criterion.

(5) The maximum allowable ground vibration shall be reduced by the regulatory authority beyond the limits otherwise provided by this section, if determined necessary to provide damage protection.

(6) The regulatory authority may require an operator to conduct seismic monitoring of any or all blasts or may specify the location at which the measurements are taken and the degree of detail necessary in the measurement.

(e) The maximum airblast and ground-vibration standards of paragraphs (b) and (d) of this section shall not apply at the following locations:

(1) At structures owned by the permittee and not leased to another person.

(2) At structures owned by the permittee and leased to another person, if a written waiver by the lessee is submitted to the regulatory authority before blasting.

[48 FR 9807, Mar. 8, 1983, as amended at 48 FR 44780, Sept. 30, 1983]

§ 816.68 Use of explosives: Records of blasting operations.

The operator shall retain a record of all blasts for at least 3 years. Upon request, copies of these records shall be made available to the regulatory authority and to the public for inspection. Such records shall contain the following data:

(a) Name of the operator conducting the blast.

(b) Location, date, and time of the blast.

(c) Name, signature, and certification number of the blaster conducting the blast.

(d) Identification, direction, and distance, in feet, from the nearest blast hole to the nearest dwelling, public building, school, church, community or institutional building outside the permit area, except those described in § 816.67(e).

(e) Whether conditions, including those which may cause possible adverse blasting effects.

(f) Type of material blasted.

(g) Sketches of the blast pattern including number of holes, burden, spacing, decks, and delay pattern.

(h) Diameter and depth of holes.

(i) Types of explosives used.

(j) Total weight of explosives used per hole.

(k) The maximum weight of explosives detonated in an 8-millisecond period.

(l) Initiation system.

(m) Type and length of stemming.

(n) Mats or other protections used.

(o) Seismographic and airblast records, if required, which shall include—

(1) Type of instrument, sensitivity, and calibration signal or certification of annual calibration;

(2) Exact location of instrument and the date, time, and distance from the blast;

(3) Name of the person and firm taking the reading;

(4) Name of the person and firm analyzing the seismographic record; and

(5) The vibration and/or airblast level recorded.

(p) Reasons and conditions for each unscheduled blast.

[48 FR 9809, Mar. 8, 1983]

§ 816.71 Disposal of excess spoil: General requirements.

(a) *General.* Excess spoil shall be placed in designated disposal areas within the permit area, in a controlled manner to—

(1) Minimize the adverse effects of leachate and surface water runoff from the fill on surface and ground waters;

(2) Ensure mass stability and prevent mass movement during and after construction; and

(3) Ensure that the final fill is suitable for reclamation and revegetation compatible with the natural surroundings and the approved postmining land use.

(b) *Design certification.* (1) The fill and appurtenant structures shall be designed using current, prudent engineering practices and shall meet any design criteria established by the regulatory authority. A qualified registered professional engineer experienced in the design of earth and rock fills shall certify the design of the fill and appurtenant structures.

(2) The fill shall be designed to attain a minimum long-term static safety factor of 1.5. The foundation and abutments of the fill must be stable under all conditions of construction.

(c) *Location.* The disposal area shall be located on the most moderately sloping and naturally stable areas available, as approved by the regulatory authority, and shall be placed, where possible, upon or above a natural terrace, bench, or berm, if such placement provides additional stability and prevents mass movement.

(d) *Foundation.* (1) Sufficient foundation investigations, as well as any necessary laboratory testing of foundation material, shall be performed in order to determine the design requirements for foundation stability. The analyses of foundation conditions shall take into consideration the effect of underground mine workings, if any, upon the stability of the fill and appurtenant structures.

(2) Where the slope in the disposal area is in excess of 2.8h:1v (36 percent), or such lesser slope as may be designated by the regulatory authority based on local conditions, keyway cuts (excavations to stable bedrock) or rock toe buttresses shall be constructed to ensure stability of the fill. Where the toe of the spoil rests on a downslope, stability analyses shall be performed in accordance with § 780.35(c) of this chapter to determine the size of rock toe buttresses and keyway cuts.

(e) *Placement of excess spoil.* (1) All vegetative and organic materials shall be removed from the disposal area prior to placement of the excess spoil. Topsoil shall be removed, segregated and stored or redistributed in accordance with § 816.22. If approved by the regulatory authority, organic material may be used as mulch or may be included in the topsoil to control erosion, promote growth of vegetation or increase the moisture retention of the soil.

(2) Excess spoil shall be transported and placed in a controlled manner in horizontal lifts not exceeding 4 feet in thickness; concurrently compacted as necessary to ensure mass stability and to prevent mass movement during and after construction; graded so that surface and subsurface drainage is compatible with the natural surroundings; and covered with topsoil or substitute material in accordance with § 816.22 of this chapter. The regulatory authority may approve a design which incorporates placement of excess spoil in horizontal lifts other than 4 feet in thickness when it is demonstrated by the operator and certified by a qualified registered professional engineer that the design will ensure the stability of the fill and will meet all other applicable requirements.

(3) The final configuration of the fill shall be suitable for the approved postmining land use. Terraces may be constructed on the outslope of the fill if required for stability, control of erosion, to conserve soil moisture, or to facilitate the approved postmining land use. The grade of the outslope between terrace benches shall not be steeper than 2h: 1v (50 percent).

(4) No permanent impoundments are allowed on the completed fill. Small depressions may be allowed by the regulatory authority if they are needed to retain moisture, minimize erosion, create and enhance wildlife habitat, or assist revegetation; and if they are not incompatible with the stability of the fill.

(5) Excess spoil that is acid- or toxic-forming or combustible shall be adequately covered with nonacid, nontoxic and noncombustible material, or treated, to control the impact on surface and ground water in accordance with § 816.41, to prevent sustained combustion, and to minimize adverse effects on plant growth and the approved postmining land use.

(f) *Drainage control.* (1) If the disposal area contains springs, natural or manmade water courses, or wet weather seeps, the fill design shall include diversions and underdrains as necessary to control erosion, prevent water infiltration into the fill, and ensure stability.

(2) Diversions shall comply with the requirements of § 816.43.

(3) Underdrains shall consist of durable rock or pipe, be designed and constructed using current, prudent engineering practices and meet any design criteria established by the regulatory authority. The underdrain system shall be designed to carry the anticipated seepage of water due to rainfall away from the excess spoil fill and from seeps and springs in the foundation of the disposal area and shall be protected from piping and contamination by an adequate filter. Rock underdrains shall be constructed of durable, nonacid-,nontoxic-forming rock (*e.g.*, natural sand and gravel, sandstone, limestone, or other durable rock) that does not slake in water or degrade to soil material, and which is free of coal, clay or other nondurable material. Perforated pipe underdrains shall be corrosion resistant and shall have characteristics consistent with the long-term life of the fill.

(g) *Surface area stabilization.* Slope protection shall be provided to minimize surface erosion at the site. All disturbed areas, including diversion channels that are not riprapped or otherwise protected, shall be revegetated upon completion of construction.

(h) *Inspections.* A qualified registered professional engineer, or other qualified professional specialist under the direction of the professional engineer, shall periodically inspect the fill during construction. The professional engineer or specialist shall be experienced in the construction of earth and rock fills.

(1) Such inspections shall be made at least quarterly throughout construction and during critical construction periods. Critical construction periods shall include at a minimum:

(i) Foundation preparation, including the removal of all organic material and topsoil; (ii) placement of underdrains and protective filter systems; (iii) installation of final surface drainage systems; and (iv) the final graded and revegetated fill. Regular inspections by the engineer or specialist shall also be conducted during placement and compaction of fill materials.

(2) The qualified registered professional engineer shall provide a certified report to the regulatory authority promptly after each inspection that the fill has been constructed and maintained as designed and in accordance with the approved plan and this chapter. The report shall include appearances of instability, structural weakness, and other hazardous conditions.

(3) (i) The certified report on the drainage system and protective filters shall include color photographs taken during and after construction, but before underdrains are covered with excess spoil. If the underdrain system is constructed in phases, each phase shall be certified separately.

(ii) Where excess durable rock spoil is placed in single or multiple lifts such that the underdrain system is constructed simultaneously with excess spoil placement by the natural segregation of dumped materials, in accordance with § 816.73, color photographs shall be taken of the underdrain as the underdrain system is being formed.

(iii) The photographs accompanying each certified report shall be taken in adequate size and number with enough terrain or other physical features of the site shown to provide a relative scale to the photographs and to specifically and clearly identify the site.

(4) A copy of each inspection report shall be retained at or near the mine site.

(i) *Coal mine waste.* Coal mine waste may be disposed of in excess spoil fills if approved by the regulatory authority and, if such waste is—

(1) Placed in accordance with § 816.83;

(2) Nontoxic and nonacid forming; and

(3) Of the proper characteristics to be consistent with the design stability of the fill.

(j) *Underground disposal.* Excess spoil may be disposed of in underground mine workings, but only in accordance with a plan approved by the regulatory authority and MSHA under § 784.25 of this chapter.

[48 FR 32925, July 19, 1983, as amended at 48 FR 44780, Sept. 30, 1983]

§ 816.72 Disposal of excess spoil: Valley fills/head-of-hollow fills.

Valley fills and head-of-hollow fills shall meet the requirements of § 816.71 and the additional requirements of this section.

(a) *Drainage control.* (1) The top surface of the completed fill shall be graded such that the final slope after settlement will be toward properly designed drainage channels. Uncontrolled surface drainage may not be directed over the outslope of the fill.

(2) Runoff from areas above the fill and runoff from the surface of the fill shall be diverted into stabilized diversion channels designed to meet the requirements of § 816.43 and, in addition, to safely pass the runoff from a 100-year, 6-hour precipitation event.

(b) *Rock-core chimney drains.* A rock-core chimney drain may be used in a head-of-hollow fill, instead of the underdrain and surface diversion system normally required, as long as the fill is not located in an area containing intermittent or perennial streams. A rock-core chimney drain may be used in a valley fill if the fill does not exceed 250,000 cubic yards of material and upstream drainage is diverted around the fill. The alternative rock-core chimney drain system shall be incorporated into the design and construction of the fill as follows.

(1) The fill shall have, along the vertical projection of the main buried stream channel or rill, a vertical core of durable rock at least 16 feet thick which shall extend from the toe of the fill to the head of the fill, and from the base of the fill to the surface of the fill. A system of lateral rock underdrains shall connect this rock core to each area of potential drainage or seepage in the disposal area. The underdrain system and rock core shall be designed to carry the anticipated seepage of water due to rainfall away from the excess spoil fill and from seeps and springs in the foundation of the disposal area. Rocks used in the rock core and underdrains shall meet the requirements of § 816.71(f).

(2) A filter system to ensure the proper long-term functioning of the rock core shall be designed and constucted using current, prudent engineering practices.

(3) Grading may drain surface water away from the outslope of the fill and toward the rock core. In no case, however, may intermittent or perennial streams be diverted into the rock core. The maximum slope of the top of the fill shall be 33h:1v (3 percent). A drainage pocket may be maintained at the head of the fill during and after construction, to intercept surface runoff and discharge the runoff through or over the rock drain, if stability of the fill is not impaired. In no case shall this pocket or sump have a potential capacity for impounding more than 10,000 cubic feet of water. Terraces on the fill shall be graded with a 3 to 5 percent grade toward the fill and a 1 percent slope toward the rock core.

[48 FR 32926, July 19, 1983]

§ 816.73 Disposal of excess spoil: Durable rock fills.

The regulatory authority may approve the alternative method of disposal of excess durable rock spoil by gravity placement in single or multiple lifts, provided the following conditions are met:

(a) Except as provided in this section, the requirements of § 816.71 are met.

(b) The excess spoil consists of at least 80 percent, by volume, durable, nonacid- and nontoxic-forming rock (*e.g.*, sandstone or limestone) that does not slake in water and will not degrade to soil material. Where used, noncemented clay shale, clay spoil, soil or other nondurable excess spoil materials shall be mixed with excess durable rock spoil in a controlled manner such that no more than 20 percent of the fill volume, as determined by tests performed by a registered engineer and approved by the regulatory authority, is not durable rock.

(c) A qualified registered professional engineer certifies that the design will ensure the stability of the fill and meet all other applicable requirements.

(d) The fill is designed to attain a minimum long-term static safety factor of 1.5, and an earthquake safety factor of 1.1.

(e) The underdrain system may be constructed simultaneously with excess spoil placement by the natural segregation of dumped materials, provided the resulting underdrain system is capable of carrying anticipated seepage of water due to rainfall away from the excess spoil fill and from seeps and springs in the foundation of the disposal area and the other requirements for drainage control are met.

(f) Surface water runoff from areas adjacent to and above the fill is not allowed to flow onto the fill and is diverted into stabilized diversion channels designed to meet the requirements of § 816.43 and to safely pass the runoff from a 100-year, 6-hour precipitation event.

[48 FR 32926, July 19, 1983, as amended at 48 FR 44780, Sept. 30, 1983]

§ 816.74 Disposal of excess spoil: Preexisting benches.

(a) The regulatory authority may approve the disposal of excess spoil through placement on preexisting benches, provided that all the standards set forth in § 816.71(a), (b)(1), (d) through (i) and the requirements of this section are met.

(b) Excess spoil shall be placed only on the solid portion of the preexisting bench.

(c) The fill shall be designed, using current, prudent engineering practices, to attain a long-term static safety factor of 1.3 for all portions of the fill.

(d) The preexisting bench shall be backfilled and graded to—

(1) Achieve the most moderate slope possible which does not exceed the angle of repose, and

(2) Eliminate the highwall to the maximum extent technically practical.

(e) Disposal of excess spoil from an upper actively mined bench to a lower preexisting bench by means of gravity transport may be approved by the regulatory authority provided that—

(1) The gravity transport courses are determined on a site-specific basis by the operator as part of the permit application and approved by the regulatory authority to minimize hazards to health and safety and to ensure that damage will be minimized between the benches, outside the set course, and downslope of the lower bench should excess spoil accidentally move;

(2) All gravity transported excess spoil, including that excess spoil immediately below the gravity transport courses and any preexisting spoil that is disturbed, is rehandled and placed in horizontal lifts in a controlled manner, concurrently compacted as necessary to ensure mass stability and to prevent mass movement, and graded to allow surface and subsurface drainage to be compatible with the natural surroundings and to ensure a minimum long-term static safety factor of 1.3. Excess spoil on the bench prior to the current mining operation that is not disturbed need not be rehandled except where necessary to ensure stability of the fill;

(3) A safety berm is constructed on the solid portion of the lower bench prior to gravity transport of the excess spoil. Where there is insufficient material on the lower bench to construct a safety berm, only that amount of excess spoil necessary for the construction of the berm may be gravity transported to the lower bench prior to construction of the berm.

(4) Excess spoil shall not be allowed on the downslope below the upper bench except on designated gravity transport courses properly prepared according to § 816.22. Upon completion of the fill, no excess spoil shall be allowed to remain on the designated gravity transport course between the two benches and each transport course shall be reclaimed in accordance with the requirements of this part.

[48 FR 32927, July 19, 1983]

§ 816.79 Protection of underground mining.

No surface mining activities shall be conducted closer than 500 feet to any point of either an active or abandoned underground mine, except to the extent that—

(a) The activities result in improved resource recovery, abatement of water pollution, or elimination of hazards to the health and safety of the public; and

(b) The nature, timing, and sequence of the activities that propose to mine closer than 500 feet to an active underground mine are jointly approved by the regulatory authority, the Mine Safety and Health Administration, and the State agency, if any, responsible for the safety of underground mine workers.

[48 FR 24651, June 1, 1983]

§ 816.81 Coal mine waste: General requirements.

(a) *General.* All coal mine waste shall be placed in new or existing disposal areas within a permit area, which are approved by the regulatory authority for this purpose. Coal mine waste shall be placed in a controlled manner to—

(1) Minimize adverse effects of leachate and surface-water runoff on surface and ground water quality and quantity;

(2) Ensure mass stability and prevent mass movement during and after construction;

(3) Ensure that the final disposal facility is suitable for reclamation and revegetation compatible with the natural surroundings and the approved postmining land use;

(4) Not create a public hazard; and

(5) Prevent combustion.

(b) Coal mine waste material from activities located outside a permit area may be disposed of in the permit area only if approved by the regulatory authority. Approval shall be based upon a showing that such disposal will be in accordance with the standards of this section.

(c) *Design certification.* (1) The disposal facility shall be designed using current, prudent engineering practices and shall meet any design criteria established by the regulatory authority. A qualified registered professional engineer, experienced in the design of similar earth and waste structures, shall certify the design of the disposal facility.

(2) The disposal facility shall be designed to attain a minimum long-term static safety factor of 1.5. The foundation and abutments must be stable under all conditions of construction.

(d) *Foundation.* Sufficient foundation investigations, as well as any necessary laboratory testing of foundation material, shall be performed in order to determine the design requirements for foundation stability. The analyses of the foundation conditions shall take into consideration the effect of underground mine workings, if any, upon the stability of the disposal facility.

(e) *Emergency procedures.* If any examination or inspection discloses that a potential hazard exists, the regulatory authority shall be informed promptly of the finding and of the emergency procedures formulated for public protection and remedial action. If adequate procedures cannot be formulated or implemented, the regulatory authority shall be notified immediately. The regulatory authority shall then notify the appropriate agencies that other emergency procedures are required to protect the public.

(f) *Underground disposal.* Coal mine waste may be disposed of in underground mine workings, but only in accordance with a plan approved by the regulatory authority and MSHA under § 784.25 of this chapter.

[48 FR 44028, Sept. 26, 1983]

§ 816.83 Coal mine waste: Refuse piles.

Refuse piles shall meet the requirements of § 816.81, the additional requirements of this section, and the requirements of §§ 77.214 and 77.215 of this title.

(a) *Drainage control.* (1) If the disposal area contains springs, natural or manmade water courses, or wet weather seeps, the design shall include diversions and underdrains as necessary to control erosion, prevent water infiltration into the disposal facility and ensure stability.

(2) Uncontrolled surface drainage may not be diverted over the outslope of the refuse piles. Runoff from the areas above the refuse pile and runoff from the surface of the refuse pile shall be diverted into stabilized diversion channels designed to meet the requirements of § 816.43 to safely pass the runoff from a 100-year, 6-hour precipitation event. Runoff diverted from undisturbed areas need not be commingled with runoff from the surface of the refuse pile.

(3) Underdrains shall comply with the requirements of § 816.71(f)(3).

(b) *Surface area stabilization.* Slope protection shall be provided to minimize surface erosion at the site. All disturbed areas, including diversion channels that are not riprapped or otherwise protected, shall be revegetated upon completion of construction.

(c) *Placement.* (1) All vegetative and organic materials shall be removed from the disposal area prior to placement of coal mine waste. Topsoil shall be removed, segregated and stored or redistributed in accordance with § 816.22. If approved by the regulatory authority, organic material may be used as mulch, or may be included in the topsoil to control erosion, promote growth of vegetation or increase the moisture retention of the soil.

(2) The final configuration of the refuse pile shall be suitable for the approved postmining land use. Terraces may be constructed on the outslope of the refuse pile if required for stability, control or erosion, conservation of soil moisture, or facilitation of the approved postmining land use. The grade of the outslope between terrace benches shall not be steeper than 2h:1v (50 percent).

(3) No permanent impoundments shall be allowed on the completed refuse pile. Small depressions may be allowed by the regulatory authority if they are needed to retain moisture, minimize erosion, create and enhance wildlife habitat, or assist revegetation, and if they are not incompatible with stability of the refuse pile.

(4) Following final grading of the refuse pile, the coal mine waste shall be covered with a minimum of 4 feet of the best available, nontoxic and noncombustible material, in a manner that does not impede drainage from the underdrains. The regulatory authority may allow less than 4 feet of cover material based on physical and chemical analyses which show that the requirements of §§ 816.111 through 816.116 will be met.

(d) *Inspections.* A qualified registered professional engineer, or other qualified professional specialist under the direction of the professional engineer, shall inspect the refuse pile during construction. The professional engineer or specialist shall be experienced in the construction of similar earth and waste structures.

(1) Such inspections shall be made at least quarterly throughout construction and during critical construction periods. Critical construction periods shall include at a minimum:

(i) Foundation preparation including the removal of all organic material and topsoil; (ii) placement of underdrains and protective filter systems; (iii) installation of final surface drainage systems; and (iv) the final graded and revegetated facility. Regular inspections by the engineer or specialist shall also be conducted during placement and compaction of coal mine waste materials. More frequent inspections shall be conducted if a danger of harm exists to the public health and safety or the environment. Inspections shall continue until the refuse pile has been finally graded and revegetated or until a later time as required by the regulatory authority.

(2) The qualified registered professional engineer shall provide a certified report to the regulatory authority promptly after each inspection that the refuse pile has been constructed and maintained as designed and in accordance with the approved plan and this chapter. The report shall include appearances of instability, structural weakness, and other hazardous conditions.

(3) The certified report on the drainage system and protective filters shall include color photographs taken during and after construction, but before underdrains are covered with coal mine waste. If the underdrain system is constructed in phases, each phase shall be certified separately. The photographs accompanying each certified report shall be taken in adequate size and number with enough terrain or other physical features of the site shown to provide a relative scale to the photographs and to specifically and clearly identify the site.

(4) A copy of each inspection report shall be retained at or near the minesite.

[48 FR 44028, Sept. 26, 1983]

§ 816.84 Coal mine waste: Impounding structures.

New and existing impounding structures constructed of coal mine waste or intended to impound coal mine waste shall meet the requirements of § 816.81.

(a) Coal mine waste shall not be used for construction of impounding structures unless it has been demonstrated to the regulatory authority that the stability of such a structure conforms to the requirements of this part and the use of coal mine waste will not have a detrimental effect on downstream water quality or the environment due to acid seepage through the impounding structure. The stability of the structure and the potential impact of acid mine seepage through the impounding structure shall be discussed in detail in the design plan submitted to the regulatory authority in accordance with § 780.25 of this chapter.

(b)(1) Each impounding structure constructed of coal mine waste or intended to impound coal mine waste shall be designed, constructed and maintained in accordance with § 816.49 (a) and (c). Such structures may not be retained permanently as part of the approved postmining land use.

(2) If an impounding structure constructed of coal mine waste or intended to impound coal mine waste meets the criteria of § 77.216(a) of this title, the combination of principal and emergency spillways shall be able to safely pass the 100-year, 6-hour design participation event.

(c) Spillways and outlet works shall be designed to provide adequate protection against erosion and corrosion. Inlets shall be protected against blockage.

(d) *Drainage control.* Runoff from areas above the disposal facility or runoff from surface of the facility that may cause instability or erosion of the impounding structure shall be diverted into stabilized diversion channels designed to meet the requirements of § 816.43 and designed to safely pass the round off from a 100-year, 6-hour design precipitation event.

(e) Impounding structures constructed of or impounding coal mine waste shall be designed so that at least 90 percent of the water stored during the design precipitation event can be removed within a 10-day period.

[48 FR 44029, Sept. 26, 1983]

§ 816.87 Coal mine waste: Burning and burned waste utilization.

(a) Coal mine waste fires shall be extinguished by the person who conducts the surface mining activities, in accordance with a plan approved by the regulatory authority and the Mine Safety and Health Administration. The plan shall contain, at a minimum, provisions to ensure that only those persons authorized by the operator, and who have an understanding of the procedures to be used, shall be involved in the extinguishing operations.

(b) No burning or burned coal mine waste shall be removed from a permitted disposal area without a removal plan approved by the regulatory authority. Consideration shall be given to potential hazards to persons working or living in the vicinity of the structure.

[48 FR 44029, Sept. 26, 1983]

§ 816.89 Disposal of noncoal mine wastes.

(a) Noncoal mine wastes including, but not limited to grease, lubricants, paints, flammable liquids, garbage, abandoned mining machinery, lumber and other combustible materials generated during mining activities shall be placed and stored in a controlled manner in a designated portion of the permit area. Placement and storage shall ensure that leachate and surface runoff do not degrade surface or ground water, that fires are prevented, and that the area remains stable and suitable for reclamation and revegetation compatible with the natural surroundings.

(b) Final disposal of noncoal mine wastes shall be in a designated disposal site in the permit area or a State-approved solid waste disposal area. Disposal sites in the permit area shall be designed and constructed to ensure that leachate and drainage from the noncoal mine waste area does not degrade surface or underground water. Wastes shall be routinely compacted and covered to prevent combustion and wind-borne waste. When the disposal is completed, a minimum of 2 feet of soil cover shall be placed over the site, slopes stabilized, and revegetation accomplished in accordance with §§ 816.111 through 816.116. Operation of the disposal site shall be conducted in accordance with all local, State and Federal requirements.

(c) At no time shall any noncoal mine waste be deposited in a refuse pile or impounding structure, nor shall an excavation for a noncoal mine waste disposal site be located within 8 feet of any coal outcrop or coal storage area.

(d) Notwithstanding any other provision in this chapter, any noncoal mine waste defined as "hazardous" under section 3001 of the Resource Conservation and Recovery Act (RCRA) (Pub. L. 94-580, as amended) and 40 CFR Part 261 shall be handled in accordance with the requirements of Subtitle C of RCRA and any implementing regulations.

[48 FR 44030, Sept. 26, 1983]

§ 816.95 Stabilization of surface areas.

(a) All exposed surface areas shall be protected and stabilized to effectively control erosion and air pollution attendant to erosion.

(b) Rills and gullies, which form in areas that have been regraded and topsoiled and which either (1) disrupt the approved postmining land use or the reestablishment of the vegetative cover, or (2) cause or contribute to a violation of water quality standards for receiving streams shall be filled, regraded, or otherwise stabilized; topsoil shall be replaced; and the areas shall be reseeded or replanted.

[48 FR 1163, Jan. 10, 1983]

§ 816.97 Protection of fish, wildlife, and related environmental values.

(a) The operator shall, to the extent possible using the best technology currently available, minimize disturbances and adverse impacts on fish, wildlife, and related environmental values and shall achieve enhancement of such resources where practicable.

(b) *Endangered and threatened species.* No surface mining activity shall be conducted which will jeopardize the continued existence of endangered or threatened species listed by the Secretary or which will result in the destruction or adverse modification of designated critical habitats of such species in violation of the Endangered Species Act (16 U.S.C. 1531 *et seq.*). The operator shall promptly report to the regulatory authority any endangered or threatened species within the permit area of which the operator becomes aware. Upon notification, the regulatory authority shall consult with appropriate State and Federal fish and wildlife agencies and, after consultation, shall identify whether, and under what conditions, the operator may proceed.

(c) *Bald and golden eagles.* No surface mining activity shall be conducted in a manner which would result in the unlawful taking of a bald or golden eagle, its nest, or any of its eggs. The operator shall promptly report to the regulatory authority any golden or bald eagle nest within the permit area of which the operator becomes aware. Upon notification, the regulatory authority shall consult with the U.S. Fish and Wildlife Service and also, where appropriate, the State fish and wildlife agency and, after consultation, shall identify whether, and under what conditions, the operator may proceed.

(d) Nothing in this chapter shall authorize the taking of an endangered or threatened species or a bald or golden eagle, its nest, or any of its eggs in violation of the Endangered Species Act of 1973, as amended, 16 U.S.C. 1531 *et seq.*, or the Bald Eagle Protection Act, as amended, 16 U.S.C. 668 *et seq.*

(e) Each operator shall, to the extent possible using the best technology currently available—

(1) Ensure that electric powerlines and other transmission facilities used for, or incidental to, surface mining activities on the permit area are designed and constructed to minimize electrocution hazards to raptors, except where the regulatory authority determines that such requirements are unnecessary;

(2) Locate and operate haul and access roads so as to avoid or minimize impacts on important fish and wildlife species or other species protected by State or Federal law; and

(3) Design fences, overland conveyers, and other potential barriers to permit passage for large mammals, except where the regulatory authority determines that such requirements are unnecessary.

(f) *Wetlands and habitats of unusually high value for fish and wildlife.* The operator conducting surface mining activities shall avoid disturbances to, enhance where practicable, restore, or replace, wetlands, and riparian vegetation along rivers and streams and bordering ponds and lakes. Surface mining activities shall avoid disturbances to, enhance where practicable, or restore, habitats of unusually high value for fish and wildlife.

(g) Where fish and wildlife habitat is to be a postmining land use, the plant species to be used on reclaimed areas shall be selected on the basis of the following criteria:

(1) Their proven nutritional value for fish or wildlife.

(2) Their use as cover for fish or wildlife.

(3) Their ability to support and enhance fish or wildlife habitat after the release of performance bonds. The selected plants shall be grouped and distributed in a manner which optimizes edge effect, cover, and other benefits to fish and wildlife.

(h) Where cropland is to be the postmining land use, and where appropriate for wildlife- and crop-management practices, the operator shall intersperse the fields with trees, hedges, or fence rows throughout the harvested area to break up large blocks of monoculture and to diversify habitat types for birds and other animals.

(i) Where residential, public service, or industrial uses are to be the postmining land use, and where consistent with the approved postmining land use, the operator shall intersperse reclaimed lands with greenbelts utilizing species of grass, shrubs, and trees useful as food and cover for wildlife.

[48 FR 30327, June 30, 1983]

§ 816.99 Slides and other damage.

(a) An undisturbed natural barrier shall be provided beginning at the elevation of the lowest coal seam to be mined and extending from the outslope for such distance as may be determined by the regulatory authority as is needed to assure stability. The barrier shall be retained in place to prevent slides and erosion.

(b) At any time a slide occurs which may have a potential adverse affect on public property, health, safety, or the environment, the person who conducts the surface mining activities shall notify the regulatory authority by the fastest available means and comply with any remedial measures required by the regulatory authority.

§ 816.100 Contemporaneous reclamation.

Reclamation efforts, including but not limited to backfilling, grading, topsoil replacement, and revegetation, on all land that is disturbed by surface mining activities shall occur as contemporaneously as practicable with mining operations, except when such mining operations are conducted in accordance with a variance for concurrent surface and underground mining activities issued under § 785.18 of this chapter. The regulatory authority may establish schedules that define contemporaneous reclamation.

[48 FR 24652, June 1, 1983]

§ 816.102 Backfilling and grading: General requirements.

(a) Disturbed areas shall be backfilled and graded to—

(1) Achieve the approximate original contour, except as provided in paragraph (k) of this section;

(2) Eliminate all highwalls, spoil piles, and depressions, except as provided in paragraph (h) (small depressions) and in paragraph (k)(3)(iii) (previously mined highwalls) of this section;

(3) Achieve a postmining slope that does not exceed either the angle of repose or such lesser slope as is necessary to achieve a minimum long-term static safety factor of 1.3 and to prevent slides;

(4) Minimize erosion and water pollution both on and off the site; and

(5) Support the approved postmining land use.

(b) Spoil, except excess spoil disposed of in accordance with §§ 816.71 through 816.74, shall be returned to the mined-out area.

(c) Spoil and waste materials shall be compacted where advisable to ensure stability or to prevent leaching of toxic materials.

(d) Spoil may be placed on the area outside the mined-out area in nonsteep slope areas to restore the approximate original contour by blending the spoil into the surrounding terrain if the following requirements are met:

(1) All vegetative and organic material shall be removed from the area.

(2) The topsoil on the area shall be removed, segregated, stored, and redistributed in accordance with §816.22.

(3) The spoil shall be backfilled and graded on the area in accordance with the requirements of this section.

(e) Disposal of coal processing waste and underground development waste in the mined-out area shall be in accordance with §§ 816.81 and 816.83, except that a long-term static safety factor of 1.3 shall be achieved.

(f) Exposed coal seams, acid- and toxic-forming materials, and combustible materials exposed, used, or produced during mining shall be adequately covered with nontoxic and noncombustible material, or treated, to control the impact on surface and ground water in accordance with § 816.41, to prevent sustained combustion, and to minimize adverse effects on plant growth and the approved postmining land use.

(g) Cut-and-fill terraces may be allowed by the regulatory authority where—

(1) Needed to conserve soil moisture, ensure stability, and control erosion on final-graded slopes, if the terraces are compatible with the approved postmining land use; or

(2) Specialized grading, foundation conditions, or roads are required for the approved postmining land use, in which case the final grading may include a terrace of adequate width to ensure the safety, stability, and erosion control necessary to implement the postmining land-use plan.

(h) Small depressions may be constructed if they are needed to retain moisture, minimize erosion, create and enhance wildlife habitat, or assist revegetation.

(i) Permanent impoundments may be approved if they meet the requirements of §§ 816.49 and 816.56 and if they are suitable for the approved postmining land use.

(j) Preparation of final-graded surfaces shall be conducted in a manner that minimizes erosion and provides a surface for replacement of topsoil that will minimize slippage.

(k) The postmining slope may vary from the approximate original contour when—

(1) The standards for thin overburden in §816.104 are met;

(2) The standards for thick overburden in §816.105 are met; or

(3) Approval is obtained from the regulatory authority for—

(i) Mountaintop removal operations in accordance with § 785.14 of this chapter;

(ii) A variance from approximate original contour requirements in accordance with § 785.16 of this chapter; or

(iii) Incomplete elimination of highwalls in previously mined areas in accordance with § 816.106.

[48 FR 23368, May 24, 1983, as amended at 48 FR 41734, Sept. 16, 1983]

§ 816.104 Backfilling and grading: Thin overburden.

In surface coal mining which is carried out at the same location over a substantial period of time where the operation transects the coal deposit and where the thickness of the coal deposit relative to the thickness of the overburden is large and where the operator demonstrates that the spoil and other waste materials available from the entire permit area are insufficient, giving due consideration to volumetric expansion, to restore the disturbed area to its approximate original contour, the operator shall, at a minimum—

(a) Use all available spoil and waste materials to attain the lowest practicable grade, but not more than the angle of repose; and

(b) Meet the requirements of § 816.102(a)(2) through (j).

[48 FR 23369, May 24, 1983]

§ 816.105 Backfilling and grading: Thick overburden.

In surface coal mining where the thickness of the overburden is large relative to the thickness of the coal deposit and where the operator demonstrates that the volume of the spoil and other waste materials is more than sufficient to restore the disturbed area to approximate original countour, the operator shall, at a minimum, after restoring to approximate original contour—

(a) Use the spoil and waste materials to attain the lowest practicable grade, but not more than the angle of repose;

(b) Meet the requirements of § 816.102(a)(2) through (j); and

(c) Dispose of any excess spoil in accordance with §§ 816.71 through 816.74.

[48 FR 23369, May 24, 1983]

§ 816.106 Backfilling and grading: Previously mined areas.

Remining operations on previously mined areas that contain a preexisting highwall shall comply with the requirements of §§ 816.102 through 816.107 of this chapter, except as provided in this section.

(a) The requirements of § 816.102(a) (1) and (2) requiring the elimination of highwalls shall not apply to remining opertions where the volume of all reasonably available spoil is demonstrated in writing to the regulatory authority to be insufficient to completely backfill the reaffected or enlarged highwall. The highwall shall be eliminated to the maximum extent technically practical in accordance with the following criteria:

(1) All spoil generated by the remining operation and any other reasonably available spoil shall be used to backfill the area. Reasonably available spoil in the immediate vicinity of the remining operation shall be included within the permit area.

(2) The backfill shall be graded to a slope which is compatible with the approved postmining land use and which provides adequate drainage and long-term stability.

(3) Any highwall remnant shall be stable and not pose a hazard to the public health and safety or to the environment. The operator shall demonstrate, to the satisfaction of the regulatory authority, that the highwall remnant is stable.

(4) Spoil placed on the outslope during previous mining operations shall not be disturbed if such disturbances will cause instability of the remaining spoil or otherwise increase the hazard to the public health and safety or to the environment.

(b) The requirements of § 816.102(a) (1) and (2) requiring the elimination of highwalls shall not apply to remining operations that will not cause an adverse physical impact on the preexisting highwall. Such remining operations shall comply with the following:

(1) The backfill shall be graded to a slope which is compatible with the approved postmining land use and which provides adequate drainage and long-term stability.

(2) Any highwall remnant shall be stable and not pose a hazard to the public health and safety or to the environment.

[48 FR 41734, Sept. 16, 1983]

Editorial Note: For a document suspending § 816.106(b) see 50 FR 258, Jan. 3, 1985.

§ 816.107 Backfilling and grading: Steep slopes.

(a) Surface mining activities on steep slopes shall be conducted so as to meet the requirements of §§ 816.102—816.106, and the requirements of this section except where mining is conducted on flat or gently rolling terrain with an occasional steep slope through which the mining proceeds and leaves a plain or predominantly flat area or where operations are conducted in accordance with Part 824 of this chapter.

(b) The following materials shall not be placed on the downslope:

(1) Spoil.

(2) Waste materials of any type.

(3) Debris, including that from clearing and grubbing.

(4) Abandoned or disabled equipment.

(c) Land above the highwall shall not be disturbed unless the regulatory authority finds that this disturbance will facilitate compliance with the environmental protection standards of this subchapter and the disturbance is limited to that necessary to facilitate compliance.

(d) Woody materials shall not be buried in the backfilled area unless the regulatory authority determines that the proposed method for placing woody material within the backfill will not deteriorate the stable condition of the backfilled area.

[48 FR 23369, May 24, 1983, as amended at 48 FR 41734, Sept. 16, 1983]

§ 816.111 Revegetation: General requirements.

(a) The permittee shall establish on regraded areas and on all other disturbed areas except water areas and surface areas of roads that are approved as part of the postmining land use, a vegetative cover that is in accordance with the approved permit and reclamation plan and that is—

(1) Diverse, effective, and permanent;

(2) Comprised of species native to the area, or of introduced species where desirable and necessary to achieve the approved postmining land use and approved by the regulatory authority;

(3) At least equal in extent of cover to the natural vegetation of the area; and

(4) Capable of stabilizing the soil surface from erosion.

(b) The reestablished plant species shall—

(1) Be compatible with the approved postmining land use;

(2) Have the same seasonal characteristics of growth as the original vegetation;

(3) Be capable of self-regeneration and plant succession;

(4) Be compatible with the plant and animal species of the area; and

(5) Meet the requirements of applicable State and Federal seed, poisonous and noxious plant, and introduced species laws or regulations.

(c) The regulatory authority may grant exception to the requirements of paragraphs (b) (2) and (3) of this section when the species are necessary to achieve a quick-growing, temporary, stabilizing cover, and measures to establish permanent vegetation are included in the approved permit and reclamation plan.

(d) When the regulatory authority approves a cropland postmining land use, the regulatory authority may grant exception to the requirements of paragraphs (a) (1), (3), (b) (2), and (3) of this section. The requirements of Part 823 of this chapter apply to areas identified as prime farmland.

[48 FR 40160, Sept. 2, 1983]

§ 816.113 Revegetation: Timing

Disturbed areas shall be planted during the first normal period for favorable planting conditions after replacement of the plant-growth medium. The normal period for favorable planting is that planting time generally accepted locally for the type of plant materials selected.

[48 FR 40160, Sept. 2, 1983]

§ 816.114 Revegetation: Mulching and other soil stabilizing practices.

Suitable mulch and other soil stabilizing practices shall be used on all areas that have been regraded and covered by topsoil or topsoil substitutes. The regulatory authority may waive this requirement if seasonal, soil, or slope factors result in a condition where mulch and other soil stabilizing practices are not necessary to control erosion and to promptly establish an effective vegetative cover.

[48 FR 40160, Sept. 2, 1983]

§ 816.116 Revegetation: Standards for success.

(a) Success of revegetation shall be judged on the effectiveness of the vegetation for the approved postmining land use, the exent of cover compared to the cover occurring in natural vegetation of the area, and the general requirements of § 816.111.

(1) Standards for success and statistically valid sampling techniques for measuring success shall be selected by the regulatory authority and included in an approved regulatory program.

(2) Standards for success shall include criteria representative of unmined lands in the area being reclaimed to evaluate the appropriate vegetation parameters of ground cover, production, or stocking. Ground cover, production, or stocking shall be considered equal to the approved success standard when they are not less than 90 percent of the success standard. The sampling techniques for measuring success shall use a 90-percent statistical confidence interval (i.e., one-sided test with a 0.10 alpha error).

(b) Standards for success shall be applied in accordance with the approved postmining land use and, at a minimum, the following conditions:

(1) For areas developed for use as grazing land or pasture land, the ground cover and production of living plants on the revegetated area shall be at least equal to that of a reference area or such other success standards approved by the regulatory authority.

(2) For areas developed for use as cropland, crop production on the revegetated area shall be at least equal to that of a reference area or such other success standards approved by the regulatory authority.

(3) For areas to be developed for fish and wildlife habitat, recreation, shelter belts, or forest products, success of vegetation shall be determined on the basis of tree and shrub stocking and vegetative ground cover. Such parameters are described as follows:

(i) Minimum stocking and planting arrangements shall be specified by the regulatory authority on the basis of local and regional conditions and after consultation with the State agencies responsible for the administration of forestry and wildlife programs.

(ii) Trees and shrubs that will be used in determining the success of stocking and the adequacy of plant arrangement shall have utility for the approved postmining land use. At the time of bond release, such trees and shrubs shall be healthy, and at leat 80 percent shall have been in place for a least three growing seasons in areas with a 5-year period of responsibility and at least eight growing seasons in areas with a 10-year period of responsibility. No trees and shrubs in place for less than two growing seasons shall be countea in determining stocking adequacy.

(iii) Vegetative ground cover shall not be less than that required to achieve the approved postmining land use.

(4) For areas to be developed for industrial, commercial, or residential use less than 2 years after regrading is completed, the vegetative ground cover shall not be less than that required to control erosion.

(5) For areas previously disturbed by mining that were not reclaimed to the requirements of this subchapter and that are remined or otherwise redisturbed by surface coal mining operations, as a minimum, the vegetative ground cover shall be not less than the ground cover existing before redisturbance and shall be adequate to control erosion.

(c)(1) The period of extended responsibility for successful revegetation shall begin after the last year of augmented seeding, fertilizing, irrigation, or other work, excluding husbandry practices that are approved by the regulatory authority in accordance with paragraph (c)(4) of this section.

(2) In areas of more than 26.0 inches average annual precipitation, the period of responsibility shall continue for a period of not less than 5 full years. Vegetation parameters identified in paragraph (b) of this section shall equal or exceed the approved success standard during the growing season of the last year of the responsibility period or, if required by the regulatory authority, during the growing seasons of the last 2 years of the responsibility period.

(3) In areas of 26.0 inches or less average annual precipitation, the period of responsibility shall continue for a period of not less than 10 full years. Vegetation parameters identified in paragraph (b) of this section shall equal or exceed the approved success standard for at least the last 2 consecutive years of the responsibility period.

(4) The regulatory authority may approve selective husbandry practices, excluding augmented seeding, fertilization, or irrigation, without extending the period of responsibility for re-

vegetation success and bond liability, if such practices can be expected to continue as part of the postmining land use or if discontinuance of the practices after the liability period expires will not reduce the probability of permanent revegetation success. Approved practices shall be normal conservation practices within the region for unmined lands having land uses similar to the approved postmining land use of the disturbed area, including such practices as disease, pest, and vermin control; and any pruning, reseeding and/or transplanting specifically necessitated by such actions.

[48 FR 40160, Sept. 2, 1983]

§ 816.131 Cessation of operations: Temporary.

(a) Each person who conducts surface mining activities shall effectively secure surface facilities in areas in which there are no current operations, but in which operations are to be resumed under an approved permit. Temporary abandonment shall not relieve a person of their obligation to comply with any provisions of the approved permit.

(b) Before temporary cessation of mining and reclamation operations for a period of thirty days or more, or as soon as it is known that a temporary cessation will extend beyond 30 days, persons who conduct surface mining activities shall submit to the regulatory authority a notice of intention to cease or abandon mining and reclamation operations. This notice shall include a statement of the exact number of acres which will have been affected in the permit area, prior to such temporary cessation, the extent and kind of reclamation of those areas which will have been accomplished, and identification of the backfilling, regrading, revegetation, environmental monitoring, and water treatment activities that will continue during the temporary cessation.

§ 816.132 Cessation of operations: Permanent.

(a) Persons who cease surface mining activities permanently shall close or backfill or otherwise permanently reclaim all affected areas, in accordance with this chapter and the permit approved by the regulatory authority.

(b) All underground openings, equipment, structures, or other facilities not required for monitoring, unless approved by the regulatory authority as suitable for the postmining land use or environmental monitoring, shall be removed and the affected land reclaimed.

§ 816.133 Postmining land use.

(a) *General.* All disturbed areas shall be restored in a timely manner to conditions that are capable of supporting—

(1) The uses they were capable of supporting before any mining; or

(2) Higher or better uses.

(b) *Determining premining uses of land.* The premining uses of land to which the postmining land use is compared shall be those uses which the land previously supported, if the land has not been previously mined and has been properly managed. The postmining land use for land that has been previously mined and not reclaimed shall be judged on the basis of the land use that existed prior to any mining: *Provided that,* if the land cannot be reclaimed to the land use that existed prior to any mining because of the previously mined condition, the postmining land use shall be judged on the basis of the highest and best use that can be achieved which is compatible with surrounding areas and does not require the disturbance of areas previously unaffected by mining.

(c) *Criteria for alternative postmining land uses.* Higher or better uses may be approved by the regulatory authority as alternative postmining land uses after consultation with the landowner or the land management agency having jurisdiction over the lands, if the proposed uses meet the following criteria:

(1) There is a reasonable likelihood for achievement of the use.

(2) The use does not present any actual or probable hazard to public health or safety, or threat of water diminution or pollution.

(3) The use will not—

(i) Be impractical or unreasonable;

(ii) Be inconsistent with applicable land use policies or plans;

(iii) Involve unreasonable delay in implementation; or

(iv) Cause or contribute to violation of Federal, State, or local law.

(d) *Approximate original contour: Criteria for variance.* Surface coal mining operations that meet the requirements of this paragraph may be conducted under a variance from the requirement to restore disturbed areas to their approximate original contour, if the following requirements are satisfied:

(1) The regulatory authority grants the variance under a permit issued in accordance with § 785.16 of this chapter.

(2) The alternative postmining land use requirements of paragraph (c) of this section are met.

(3) All applicable requirements of the Act and the regulatory program, other than the requirement to restore disturbed areas to their approximate original contour, are met.

(4) After consultation with the appropriate land use planning agencies, if any, the potential use is shown to constitute an equal or better economic or public use.

(5) The proposed use is designed and certified by a qualified registered professional engineer in conformance with professional standards established to assure the stability, drainage, and configuration necessary for the intended use of the site.

(6) After approval, where required, of the appropriate State environmental agencies, the watershed of the permit and adjacent areas is shown to be improved.

(7) The highwall is completely backfilled with spoil material, in a manner which results in a static factor of safety of at least 1.3, using standard geotechnical analysis.

(8) Only the amount of spoil as is necessary to achieve the postmining land use, ensure the stability of spoil retained on the bench, and meet all other requirements of the Act and this chapter is placed off the mine bench. All spoil not retained on the bench shall be placed in accordance with §§ 816.71-816.74 of this chapter.

(9) The surface landowner of the permit area has knowingly requested, in writing, that a variance be granted, so as to render the land, after reclamation, suitable for an industrial, commercial, residential, or public use (including recreational facilities).

(10) Federal, State, and local government agencies with an interest in the proposed land use have an adequate period in which to review and comment on the proposed use.

[48 FR 39904, Sept. 1, 1983]

§ 816.150 Roads: General.

(a) *Road classification system.*

(1) Each road shall be classified as either a primary road or an ancillary road.

(2) A primary road is any road which is—

(i) Used for transporting coal or spoil;

(ii) Frequently used for access or other purposes for a period in excess of six months; or

(iii) To be retained for an approved postmining land use.

(3) An ancillary road is any road not classified as a primary road.

(b) *Performance standards.* Roads shall be located, designed, constructed, reconstructed, used, maintained and reclaimed so as to:

(1) Control or prevent erosion, siltation and the air pollution attendant to erosion by vegetating or otherwise stabilizing all exposed surfaces in accordance with current, prudent engineering practices;

(2) Control or prevent damage to fish, wildlife or their habitat and related environmental values;

(3) Control or prevent additional contributions of suspended solids to stream flow or runoff outside the permit area;

(4) Neither cause nor contribute to, directly or indirectly, the violation of State or Federal water quality standards applicable to receiving waters;

(5) Minimize the diminution to or degradation of the quality or quantity of surface- and ground-water systems;

(6) Refrain from significantly altering the normal flow of water in streambeds or drainage channels;

(7) Prevent or control damage to public or private property;

(8) Use nonacid- or nontoxic-forming substances in road surfacing; and

(9) Have, at a minimum, a static factor of safety of 1.3 for all embankments.

(c) *Design and construction limits and establishment of design criteria.* To ensure environmental protection and safety appropriate for their planned duration and use, including consideration of the type and size of equipment used, the design and construction or reconstruction of roads shall incorporate appropriate limits for grade, width, surface materials, surface drainage control, culvert placement, culvert size, and any necessary design criteria established by the regulatory authority.

(d) *Location.* (1) No part of any road shall be located in the channel of an intermittent or perennial stream unless specifically approved by the regulatory authority.

(2) Roads shall be located to minimize downstream sedimentation and flooding.

(e) *Maintenance.* (1) A road shall be maintained throughout its life to meet the performance standards of this part and any additional criteria specified by the regulatory authority.

(2) A road damaged by a catastrophic event, such as a flood or earthquake, shall be repaired as soon as practical after the damage has occurred.

(f) *Reclamation.* A road not to be retained for use under an approved postmining land use shall be reclaimed immediately after it is no longer needed for mining and reclamation operations, including:

(1) Closing the road to traffic;

(2) Removing all bridges and culverts;

(3) Restoring the natural drainage patterns;

(4) Reshaping all cut and fill slopes to be compatible with the postmining land use and to complement the drainage pattern of the surrounding terrain; and

(5) Replacing topsoil and revegetating disturbed surfaces in accordance with §§ 816.22 and 816.111 through 816.116.

[48 FR 22122, May 16, 1983, as amended at 48 FR 44780, Sept. 30, 1983]

EDITORIAL NOTE: For a document suspending § 816.150, except as cross-referenced in § 942.816 of this chapter, see 50 FR 7278, Feb. 21, 1985.

§ 816.151 Primary roads.

Primary roads shall meet the requirements of § 816.150 and the additional requirements of this section.

(a) *Certification.* The design and construction or reconstruction of primary roads shall be certified by a qualified registered professional engineer as meeting the requirements of this part; current, prudent engineering practices; and any design criteria established by the regulatory authority.

(b) *Location.* (1) To minimize erosion, a primary road is to be located, insofar as practical, on the most stable available surfaces.

(2) Stream fords by primary roads are prohibited unless they are specifically approved by the regulatory authority as temporary routes during periods of construction.

(c) *Drainage control.* (1) Each primary road shall be designed, constructed or reconstructed, and maintained to have adequate drainage control, using structures such as, but not limited to, bridges, ditches, cross drains, and ditch relief drains. The drainage control system shall be designed to pass the peak runoff safely from a 10-year, 6-hour precipitation event or greater event, unless otherwise specified by the regulatory authority.

(2) Drainage pipes and culverts shall be constructed to avoid plugging or collapse and erosion at inlets and outlets.

(3) Drainage ditches shall be designed to prevent uncontrolled drainage over the road surface and embankment. Trash racks and debris basins shall be installed in the drainage ditches where debris from the drainage area may impair the functions of drainage and sediment control structures.

(4) Culverts shall be designed, installed, and maintained to sustain the vertical soil pressure, the passive resistance of the foundation, and the weight of vehicles using the road.

(5) Natural stream channels shall not be altered or relocated without the prior approval of the regulatory authority in accordance with §§ 816.41 through 816.43 and 816.57.

(6) Except as provided in paragraph (b)(2) of this section, drainage structures shall be used for stream channel crossings, made using bridges, culverts, or other structures designed, constructed, and maintained using current, prudent engineering practice.

(d) *Surfacing.* Primary roads shall be surfaced with rock, crushed gravel, asphalt, or other material approved by the regulatory authority as being sufficiently durable for the anticipated volume of traffic and the weight and speed of vehicles using the road.

(e) *Maintenance.* Routine maintenance for primary roads shall include repairs to the road surface, blading, filling potholes and adding replacement gravel or asphalt. It shall also include revegetation, brush removal, and minor reconstruction of road segments as necessary.

[48 FR 22122, May 16, 1983, as amended at 48 FR 44780, Sept. 30, 1983]

EDITORIAL NOTE: For a document suspending § 816.151, except as cross-referenced in § 942.816 of this chapter, see 50 FR 7278, Feb. 21, 1985.

§ 816.180 Utility installations.

All surface coal mining operations shall be conducted in a manner which minimizes damage, destruction, or disruption of services provided by oil, gas, and water wells; oil, gas, and coal-slurry pipelines; railroads; electric and telephone lines; and water and sewage lines which pass over, under, or through the permit area, unless otherwise approved by the owner of those facilities and the regulatory authority.

[48 FR 20401, May 5, 1983]

§ 816.181 Support facilities.

(a) Support facilities shall be operated in accordance with a permit issued for the mine or coal preparation operation to which it is incident or from which its operation results.

(b) In addition to the other provisions of this part, support facilities shall be located, maintained, and used in a manner that—

(1) Prevents or controls erosion and siltation, water pollution, and damage to public or private property; and

(2) To the extent possible using the best technology currently available—

(i) Minimizes damage to fish, wildlife, and related environmental values; and

(ii) Minimizes additional contributions of suspended solids to streamflow or runoff outside the permit area. Any such contributions shall not be in excess of limitations of State or Federal law.

[48 FR 20401, May 5, 1983]

§ 816.200 Interpretative rules related to general performance standards.

The following interpretations of rules promulgated in Part 816 of this chapter have been adopted by the Office of Surface Mining Reclamation and Enforcement.

(a)—(b) [Reserved]

(c) *Interpretation of § 816.22(e)—Topsoil Removal.* (1) Results of physical and chemical analyses of overburden and topsoil to demonstrate that the resulting soil medium is equal to or more suitable for sustaining revegetation than the available topsoil, provided that trials, and tests are certified by an approved laboratory in accordance with 30 CFR 816.22(e)(1)(ii), may be obtained from any one or a combination of the following sources:

(i) U.S. Department of Agriculture Soil Conservation Service published data based on established soil series;

(ii) U.S. Department of Agriculture Soil Conservation Service Technical Guides;

(iii) State agricultural agency, university, Tennessee Valley Authority, Bureau of Land Management or U.S. Department of Agriculture Forest Service published data based on soil series properties and behavior, or

(iv) Results of physical and chemical analyses, field site trials, or greenhouse tests of the topsoil and overburden materials (soil series) from the permit area.

(2) If the operator demonstrates through soil survey or other data that the topsoil and unconsolidated material are insufficient and substitute materials will be used, only the substitute

materials must be analyzed in accordance with 30 CFR 816.22(e)(1)(i).

(Secs. 501, 502, 504, 508, 515, 516, Pub. L. 95-87, 91 Stat. 467, 468, 471, 478, 492, 496 (30 U.S.C. 1251, 1252, 1254, 1258, 1265, 1266))

[45 FR 26000, Apr. 16, 1980 and 45 FR 39447, June 10, 1980, as amended at 45 FR 73946, Nov. 7, 1980]

PART 817—PERMANENT PROGRAM PERFORMANCE STANDARDS—UNDERGROUND MINING ACTIVITIES

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AUTHORITY: Pub. L. 95-87, 91 Stat. 445 (30 U.S.C. 1201 *et seq.*) and sec. 115, Pub. L. 98-146, 97 Stat. 938 (30 U.S.C. 1257).

SOURCE: 44 FR 15422, Mar. 13, 1979, unless otherwise noted.

§ 817.1 Scope.

This part sets forth the minimum environmental protection performance standards to be adopted and implemented under regulatory programs for underground mining activities.

§ 817.2 Objectives.

This part is intended to ensure that all underground mining activities are conducted in a manner which preserves and enhances environmental and other values in accordance with the Act.

§ 817.10 Information collection.

The information collection requirements contained in 30 CFR 817.46(c)(4), 817.46(r), 817.46(t), 817.49(h), 817.49(i), 817.52(a), 817.52(b)(1)(ii) and (iii), 817.53(a), 817.62, 817.65(b)(2)(iii), 817.67, 817.68, 817.71(j), 817.82(a)(4), 817.82(b), 817.87, 817.91(b), 817.95, 817.116, 817.117(b)(4), 817.117(c)(1) and (3), 817.131(b), 817.133(c)(1) thru (4), 817.133(c)(8) and (9), 817.150(d)(1), 817.152(d)(13), 817.160(d)(1) and 817.163(d) have been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned clearance number 1029-0048. The information is being collected to meet the requirements of section 516 of Pub. L. 95-87, which provides that permittees conducting underground coal mining operations shall meet the applicable performance standards of the Act. This information will be used by the regulatory authority in monitoring and inspecting underground mining activities. The obligation to respond is mandatory.

[48 FR 33687, Aug. 4, 1983]

§ 817.11 Signs and markers.

(a) *Specifications.* Signs and markers required under this part shall—

(1) Be posted, maintained, and removed by the person who conducts the underground mining activities;

(2) Be of a uniform design throughout the activities that can be easily seen and read;

(3) Be made of durable material; and

(4) Conform to local laws and regulations.

(b) *Duration of maintenance.* Signs and markers shall be maintained during all activities to which they pertain.

(c) *Mine and permit identification signs.* (1) Identification signs shall be displayed at each point of access from public roads to areas of surface operations and facilities on permit areas for underground mining activities.

(2) Signs will show the name, business address, and telephone number of the person who conducts underground mining activities and the identification number of the current regulatory program permit authorizing underground mining activities.

(3) Signs shall be retained and maintained until after the release of all bonds for the permit area.

(d) *Perimeter markers.* Each person who conducts underground mining activities shall clearly mark the perimeter of all areas affected by surface operations or facilities before beginning mining activities.

(e) *Buffer zone markers.* Buffer zones required by § 817.57 shall be clearly marked to prevent disturbance by surface operations and facilities.

(f) *Topsoil markers.* Where topsoil or other vegetation-supporting material is segregated and stockpiled as required under § 817.22, the stockpiled material shall be clearly marked.

[44 FR 15422, Mar. 13, 1979, as amended at 48 FR 9809, Mar. 8, 1983; 48 FR 44781, Sept. 30, 1983]

§ 817.13 Casing and sealing of exposed underground openings: General requirements.

Each exploration hole, other drillhole or borehole, shaft, well, or other exposed underground opening shall be cased, lined, or otherwise managed as approved by the regulatory authority to prevent acid or other toxic drainage from entering ground and surface waters, to minimize disturbance to the prevailing hydrologic balance and to ensure the safety of people, livestock, fish and wildlife, and machinery in the permit area and adjacent area. Each exploration hole, drill hole or borehole or well that is uncovered or exposed by mining activities within the permit area shall be permanently closed, unless approved for water monitoring or otherwise managed in a manner approved by the regulatory authority. Use of a drilled hole or monitoring well as a water well must meet the provisions of § 817.41 of this part. This section does not apply to holes drilled and used for blasting, in the area affected by surface operations.

[44 FR 15422, Mar. 13, 1979, as amended at 48 FR 14822, Apr. 5, 1983; 48 FR 43992, Sept. 26, 1983]

§ 817.14 Casing and sealing of underground openings: Temporary.

(a) Each mine entry which is temporarily inactive, but has a further projected useful service under the approved permit application, shall be protected by barricades or other covering devices, fenced, and posted with signs, to prevent access into the entry and to identify the hazardous nature of the opening. These devices shall be periodically inspected and maintained in good operating condition by the person who conducts the underground mining activities.

(b) Each exploration hole, other drill hole or borehole, shaft, well, and other exposed underground opening which has been identified in the approved permit application for use to return underground development waste, coal processing waste or water to underground workings, or to be used to monitor ground water conditions, shall be temporarily sealed until actual use.

§ 817.15 Casing and sealing of underground openings: Permanent.

When no longer needed for monitoring or other use approved by the regulatory authority upon a finding of no adverse environmental or health and safety effects, or unless approved for transfer as a water well under § 817.41, each shaft, drift, adit, tunnel, exploratory hole, entryway or other opening to the surface from underground shall be capped, sealed, backfilled, or otherwise properly managed, as required by the regulatory authority in accordance with § 817.13 and consistent with 30 CFR 75.1771. Permanent closure measures shall be designed to prevent access to the mine workings by people, livestock, fish and wildlife, machinery and to keep acid or other toxic drainage from entering ground or surface waters.

[44 FR 15422, Mar. 13, 1979, as amended at 48 FR 43992, Sept. 26, 1983]

§ 817.22 Topsoil and subsoil.

(a) *Removal.* (1)(i) All topsoil shall be removed as a separate layer from the area to be disturbed, and segregated.

(ii) Where the topsoil is of insufficient quantity or of poor quality for sustaining vegetation, the materials approved by the regulatory authority in accordance with paragraph (b) of this section shall be removed as a separate layer from the area to be disturbed, and segregated.

(2) If topsoil is less than 6 inches thick, the operator may remove the topsoil and the unconsolidated materials immediately below the topsoil and treat the mixture as topsoil.

(3) The regulatory authority may choose not to require the removal of topsoil for minor disturbances which—

(i) Occur at the site of small structures, such as power poles, signs, or fence lines; or

(ii) Will not destroy the existing vegetation and will not cause erosion.

(4) *Timing.* All materials to be removed under this section shall be removed after the vegetative cover that would interfere with its salvage is cleared from the area to be disturbed, but before any drilling, blasting, mining, or other surface disturbance takes place.

(b) *Substitutes and supplements.* Selected overburden materials may be substituted for, or used as a supplement to, topsoil if the operator demonstrates to the regulatory authority that the resulting soil medium is equal to, or more suitable for sustaining vegetation than, the existing topsoil, and the resulting soil medium is the best available in the permit area to support revegetation.

(c) *Storage.* (1) Materials removed under Paragraph (a) of this section shall be segregated and stockpiled when it is impractical to redistribute such materials promptly on regraded areas.

(2) Stockpiled materials shall—

(i) Be selectively placed on a stable site within the permit area;

(ii) Be protected from contaminants and unnecessary compaction that would interfere with revegetation;

(iii) Be protected from wind and water erosion through prompt establishment and maintenance of an effective, quick growing vegetative cover or through other measures approved by the regulatory authority; and

(iv) Not be moved until required for redistribution unless approved by the regulatory authority.

(3) Where long-term surface disturbances will result from facilities such as support facilities and preparation plants and where stockpiling of materials removed under paragraph (a)(1) of this section would be detrimental to the quality or quantity of those materials, the regulatory authority may approve the temporary distribution of the soil materials so removed to an approved site within the permit area to enhance the current use of that site until needed for later reclamation, provided that—

(i) Such action will not permanently diminish the capability of the topsoil of the host site; and

(ii) The material will be retained in a condition more suitable for redistribution than if stockpiled.

(d) *Redistribution.* (1) Topsoil materials removed under paragraph (a) of this section shall be redistributed in a manner that—

(i) Achieves an approximately uniform, stable thickness consistent with the approved postmining land use, contours, and surface-water drainage systems;

(ii) Prevents excess compaction of the materials; and

(iii) Protects the materials from wind and water erosion before and after seeding and planting.

(2) Before redistribution of the material removed under paragraph (a) of this section, the regraded land shall be treated if necessary to reduce potential slippage of the redistributed material and to promote root penetration. If no harm will be caused to the redistributed material and reestablished vegetation, such treatment may be conducted after such material is replaced.

(3) The regulatory authority may choose not to require the redistribution of topsoil or topsoil substitutes on the approved postmining embankments of permanent impoundments or of roads if it determines that—

(i) Placement of topsoil or topsoil substitutes on such embankments is inconsistent with the requirement to use the best technology currently available to prevent sedimentation, and

(ii) Such embankments will be otherwise stabilized.

(4) *Nutrients and soil amendments.* Nutrients and soil amendments shall be applied to the initially redistributed material when necessary to establish the vegetative cover.

(e) *Subsoil segregation.* The regulatory authority may require that the B horizon, C horizon, or other underlying strata, or portions thereof, be removed and segregated, stockpiled, and redistributed as subsoil in accordance with the requirements of paragraphs (c) and (d) of this section if it finds that such subsoil layers are necessary to comply with the revegetation requirements of §§ 817.111, 817.113, 817.114, and 817.116 of this chapter.

[48 FR 22101, May 16, 1983]

§ 817.41 Hydrologic-balance protection.

(a) *General.* All underground mining and reclamation activities shall be conducted to minimize disturbance of the hydrologic balance within the permit and adjacent areas, to prevent material damage to the hydrologic balance outside the permit area, and to support approved postmining land uses in accordance with the terms and conditions of the approved permit and the performance standards of this part. The regulatory authority may require additional preventative, remedial, or monitoring measures to assure that material damage to the hydrologic balance outside the permit area is prevented. Mining and reclamation practices that minimize water pollution and changes in flow shall be used in preference to water treatment.

(b) *Ground-water protection.* In order to protect the hydrologic balance underground mining activities shall be conducted according to the plan approved under § 784.14(g) of this chapter and the following.

(1) Ground-water quality shall be protected by handling earth materials and runoff in a manner that minimizes acidic, toxic, or other harmful infiltration to ground-water systems and by managing excavations and other disturbances to prevent or con-

trol the discharge of pollutants into the ground water.

(2) Ground-water quantity shall be protected by handling earth materials and runoff in a manner that will restore approximate premining recharge capacity of the reclaimed area as a whole, excluding coal mine waste disposal areas and fills, so as to allow the movement of water to the ground-water system.

(c) *Ground-water monitoring.* (1) Ground-water monitoring shall be conducted according to the ground-water monitoring plan approved under § 784.14(h) of this chapter. The regulatory authority may require additional monitoring when necessary.

(2) Ground-water monitoring data shall be submitted every 3 months to the regulatory authority or more frequently as prescribed by the regulatory authority. Monitoring reports shall include analytical results from each sample taken during the reporting period. When the analysis of any ground-water sample indicates noncompliance with the permit conditions, then the operator shall promptly notify the regulatory authority and immediately take the actions provided for in §§ 773.17(e) and 784.14(g) of this chapter.

(3) Ground-water monitoring shall proceed through mining and continue during reclamation until bond release. Consistent with the procedures of § 774.13 of this chapter, the regulatory authority may modify the monitoring requirements including the parameters covered and the sampling frequency if the operator demonstrates, using the monitoring data obtained under this paragraph, that—

(i) The operation has minimized disturbance to the prevailing hydrologic balance in the permit and adjacent areas and prevented material damage to the hydrologic balance outside the permit area; water quantity and quality are suitable to support approved postmining land uses; or

(ii) Monitoring is no longer necessary to achieve the purposes set forth in the monitoring plan approved under § 784.14(h) of this chapter.

(4) Equipment, structures, and other devices used in conjunction with monitoring the quality and quantity of ground water onsite and offsite shall be properly installed, maintained, and operated and shall be removed by the operator when no longer needed.

(d) *Surface-water protection.* In order to protect the hydrologic balance, underground mining activities shall be conducted according to the plan approved under § 784.14(g) of this chapter, and the following:

(1) Surface-water quality shall be protected by handling earth materials, ground-water discharges, and runoff in a manner that minimizes the formation of acidic or toxic drainage; prevents, to the extent possible using the best technology currently available, additional contribution of suspended solids to streamflow outside the permit area; and otherwise prevent water pollution. If drainage control, restabilization and revegetation of disturbed areas, diversion of runoff, mulching, or other reclamation and remedial practices are not adequate to meet the requirements of this section and § 817.42, the operator shall use and maintain the necessary water-treatment facilities or water quality controls.

(2) Surface-water quantity and flow rates shall be protected by handling earth materials and runoff in accordance with the steps outlined in the plan approved under § 784.14(g) of this chapter.

(e) *Surface-water monitoring.* (1) Surface-water monitoring shall be conducted according to the surface-water monitoring plan approved under § 784.14(i) of this chapter. The regulatory authority may require additional monitoring when necessary.

(2) Surface-water monitoring data shall be submitted every 3 months to the regulatory authority or more frequently as prescribed by the regulatory authority. Monitoring reports shall include analytical results from each sample taken during the reporting period. When the analysis of any surface-water sample indicates noncompliance with the permit conditions, the operator shall promptly notify the regulatory authority and immediately take the actions provided for in §§ 773.17(e) and 784.14(g) of this chapter. The reporting requirements of this paragraph do not exempt the

operator from meeting any National Pollutant Discharge Elimination System (NPDES) reporting requirements.

(3) Surface-water monitoring shall proceed through mining and continue during reclamation until bond release. Consistent with § 774.13 of this chapter, the regulatory authority may modify the monitoring requirements, except those required by the NPDES permitting authority, including the parameters covered and sampling frequency if the operator demonstrates, using the monitoring data obtained under this paragraph, that—

(i) The operation has minimized disturbance to the hydrologic balance in the permit and adjacent areas and prevented material damage to the hydrologic balance outside the permit area; water quantity and quality are suitable to support approved postmining land uses; and

(ii) Monitoring is no longer necessary to achieve the purposes set forth in the monitoring plan approved under § 784.14(i) of this chapter.

(4) Equipment, structures, and other devices used in conjunction with monitoring the quality and quantity of surface water onsite and offsite shall be properly installed, maintained, and operated and shall be removed by the operator when no longer needed.

(f) *Acid- and toxic-forming materials.* (1) Drainage from acid- and toxic-forming materials and underground development waste into surface water and ground water shall be avoided by—

(i) Identifying and burying and/or treating, when necessary, materials which may adversely affect water quality, or be detrimental to vegetation or to public health and safety if not buried and/or treated, and

(ii) Storing materials in a manner that will protect surface water and ground water by preventing erosion, the formation of polluted runoff, and the infiltration of polluted water. Storage shall be limited to the period until burial and/or treatment first become feasible, and so long as storage will not result in any risk of water pollution or other environmental damage.

(2) Storage, burial or treatment practices shall be consistent with other material handling and disposal provisions of this chapter.

(g) *Transfer of wells.* Before final release of bond, exploratory or monitoring wells shall be sealed in a safe and environmentally sound manner in accordance with §§ 817.13 and 817.15. With the prior approval of the regulatory authority, wells may be transferred to another party for further use. However, at a minimum, the conditions of such transfer shall comply with State and local laws and the permittee shall remain responsible for the proper management of the well until bond release in accordance with §§ 817.13 to 817.15.

(h) *Discharges into an underground mine.* (1) Discharges into an underground mine are prohibited, unless specifically approved by the regulatory authority after a demonstration that the discharge will—

(i) Minimize disturbance to the hydrologic balance on the permit area, prevent material damage outside the permit area and otherwise eliminate public hazards resulting from underground mining activities;

(ii) Not result in a violation of applicable water quality standards or effluent limitations;

(iii) Be at a known rate and quality which shall meet the effluent limitations of § 817.42 for pH and total suspended solids, except that the pH and total suspended solids limitations may be exceeded, if approved by the regulatory authority; and

(iv) Meet with the approval of the Mine Safety and Health Administration.

(2) Discharges shall be limited to the following:

(i) water;

(ii) Coal-processing waste;

(iii) Fly ash from a coal-fired facility;

(iv) Sludge from an acid-mine-drainage treatment facility;

(v) Flue-gas desulfurization sludge;

(vi) Inert materials used for stabilizing underground mines; and

(vii) Underground mine development wastes.

(3) Water from one underground mine may be diverted into other underground workings according to the requirements of this section.

(i) *Gravity discharges from underground mines.* (1) Surface entries and accesses to underground workings shall be located and managed to prevent or control gravity discharge of water from the mine. Gravity discharges of water from an underground mine, other than a drift mine subject to paragraph (i)(2) of this section, may be allowed by the regulatory authority if it is demonstrated that the untreated or treated discharge complies with the performance standards of this part and any additional NPDES permit requirements.

(2) Notwithstanding anything to the contrary in paragraph (i)(1) of this section, the surface entries and accesses of drift mines first used after the implementation of a State, Federal, or Federal Lands Program and located in acid-producing or iron-producing coal seams shall be located in such a manner as to prevent any gravity discharge from the mine.

[48 FR 43992, Sept. 26, 1983]

EDITORIAL NOTE: For a document suspending § 817.41(b)(2) see 50 FR 7278, Feb. 21, 1985.

§ 817.42 Hydrologic balance: Water quality standards and effluent limitations.

Discharges of water from areas disturbed by underground mining activities shall be made in compliance with all applicable State and Federal water quality laws and regulations and with the effluent limitations for coal mining promulgated by the U.S. Environmental Protection Agency set forth in 40 CFR Part 434.

[47 FR 47222, Oct. 22, 1982, as amended at 48 FR 44051, Sept. 26, 1983]

§ 817.43 Diversions.

(a) *General requirements.* (1) With the approval of the regulatory authority, any flow from mined areas abandoned before May 3, 1978, and any flow from undisturbed areas or reclaimed areas, after meeting the criteria of § 817.46 for siltation structure removal, may be diverted from disturbed areas by means of temporary or permanent diversions. All diversions shall be designed to minimize adverse impacts to the hydrologic balance within the permit and adjacent areas, to prevent material damage outside the permit area and to assure the safety of the public. Diversions shall not be used to divert water into underground mines without approval of the regulatory authority in accordance with § 817.41(h).

(2) The diversion and its appurtenant structures shall be designed, located, constructed, and maintained to—

(i) Be stable;

(ii) Provide protection against flooding and resultant damage to life and property;

(iii) Prevent, to the extent possible using the best technology currently available, additional contributions of suspended solids to streamflow outside the permit area; and

(iv) Comply with all applicable local, State, and Federal laws and regulations.

(3) Temporary diversions shall be removed when no longer needed to achieve the purpose for which they were authorized. The land disturbed by the removal process shall be restored in accordance with this part. Before diversions are removed, downstream water-treatment facilities previously protected by the diversion shall be modified or removed, as necessary, to prevent overtopping or failure of the facilities. This requirement shall not relieve the operator from maintaining water-treatment facilities as otherwise required. A permanent diversion or a stream channel reclaimed after the removal of a temorary diversion shall be designed and constructed so as to restore or approximate the premining characteristics of the original stream channel including the natural riparian vegetation to promote the recovery and the enhancement of the aquatic habitat.

(4) The regulatory authority may specify additional design criteria for diversions to meet the requirements of this section.

(b) *Diversion of perennial and intermittent streams.* (1) Diversion of perennial and intermittent streams within the permit area may be approved by the regulatory authority after making the finding relating to stream buffer zones called for in 30 CFR 817.57 that the diversions will not adversely affect the water quantity and quality and related environmental resources of the stream.

(2) The design capacity of channels for temporary and permanent stream channel diversions shall be at least equal to the capacity of the unmodified stream channel immediately upstream and downstream from the diversion.

(3) The requirements of paragraph (a)(2)(ii) of this section shall be met when the temporary and permanent diversions for perennial and intermittent streams are designed so that the combination of channel, bank and flood-plain configuration is adequate to pass safely the peak runoff of a 10-year, 6-hour precipitation event for a temporary diversion and a 100-year, 6-hour precipitation event for a permanent diversion.

(4) The design and construction of all stream channel diversions of perennial and intermittent streams shall be certified by a qualified registered professional engineer as meeting the performance standards of this part and any design criteria set by the regulatory authority.

(c) *Diversion of miscellaneous flows.* (1) Miscellaneous flows, which consist of all flows except for perennial and intermittent streams, may be diverted away from disturbed areas if required or approved by the regulatory authority. Miscellaneous flows shall include ground-water discharges and ephemeral streams.

(2) The design, location, construction, maintenance, and removal of diversions of miscellaneous flows shall meet all of the performance standards set forth in paragraph (a) of this section.

(3) The requirements of paragraph (a)(2)(ii) of this section shall be met when the temporary and permanent diversions for miscellaneous flows are designed so that the combination of channel, bank and flood-plain configuration is adequate to pass safely the peak runoff of a 2-year, 6-hour precipitation event for a temporary diversion and a 10-year, 6-hour precipitation event for a permanent diversion.

[48 FR 43993, Sept. 26, 1983]

§ 817.45 Hydrologic balance: Sediment control measures.

(a) Appropriate sediment control measures shall be designed, constructed, and maintained using the best technology currently available to:

(1) Prevent, to the extent possible, additional contributions of sediment to stream flow or to runoff outside the permit area,

(2) Meet the more stringent of applicable State or Federal effluent limitations,

(3) Minimize erosion to the extent possible.

(b) Sediment control measures include practices carried out within and adjacent to the disturbed area. The sedimentation storage capacity of practices in and downstream from the disturbed areas shall reflect the degree to which successful mining and reclamation techniques are applied to reduce erosion and control sediment. Sediment control measures consist of the utilization of proper mining and reclamation methods and sediment control practices, singly or in combination. Sediment control methods include but are not limited to—

(1) Disturbing the smallest practicable area at any one time during the mining operation through progressive backfilling, grading, and prompt revegetation as required in § 817.111(b);

(2) Stabilizing the backfilled material to promote a reduction of the rate and volume of runoff in accordance with the requirements of § 817.102;

(3) Retaining sediment within disturbed areas;

(4) Diverting runoff away from disturbed areas;

(5) Diverting runoff using protected channels or pipes through disturbed areas so as not to cause additional erosion;

(6) Using straw dikes, riprap, check dams, mulches, vegetative sediment filters, dugout ponds, and other measures that reduce overland flow velocity, reduce runoff volume, or trap sediment;

(7) Treating with chemicals; and

(8) Treating mine drainage in underground sumps.

[44 FR 15422, Mar. 13, 1979, as amended at 48 FR 44781, Sept. 30, 1983]

§ 817.46 Hydrologic balance: Siltation structures.

(a) *Definitions.* For purposes of this section only:

(1) *Siltation structures* shall mean a sedimentation pond, a series of sedimentation ponds, or other treatment facility.

(2) *Disturbed area* shall not include those areas (i) in which the only underground mining activities include diversion ditches, siltation structures, or roads that are designed, constructed and maintained in accordance with this part; and (ii) for which the upstream area is not otherwise disturbed by the operator.

(3) *Other treatment facilities* means any chemical treatments, such as flocculation, or machanical structures, such as clarifiers, that have a point-source discharge and that are utilized to prevent additional contribution of suspended solids to streamflow or runoff outside the permit area.

(b) *General requirements.* (1) Additional contributions of suspended solids and sediment to streamflow or runoff outside the permit area shall be prevented to the extent possible using the best technology currently available.

(2) All surface drainage from the disturbed area shall be passed through a siltation structure before leaving the permit area, except as provided in paragraph (b)(5) or (e) of this section.

(3) Siltation structures for an area shall be constructed before beginning any underground mining activities in that area and, upon construction, shall be certified by a qualified registered professional engineer to be constructed as designed and as approved in the reclamation plan.

(4) Any siltation structure which impounds water shall be designed, constructed and maintained in accordance with § 817.49 of this chapter.

(5) Siltation structures shall be maintained until removal is authorized by the regulatory authority and the disturbed area has been stabilized and revegetated. In no case shall the structure be removed sooner than 2 years after the last augmented seeding.

(6) When the siltation structure is removed, the land on which the siltation structure was located shall be regraded and revegetated in accordance with the reclamation plan and §§ 817.111 through 817.116 of this chapter. Sedimentation ponds approved by the regulatory authority for retention as permanent impoundments may be exempted from this requirement.

(7) Any point-source discharge of water from underground workings to surface waters which does not meet the effluent limitations of § 817.42 shall be passed through a siltation structure before leaving the permit area.

(c) *Sedimentation ponds.* (1) Sedimentation ponds, when used, shall—

(i) Be used individually or in series;

(ii) Be located as near as possible to the distrubed area and out of perennial streams unless approved by the regulatory authority; and

(iii) Be designed, constructed, and maintained to—

(A) Provide adequate sediment storage volume;

(B) Provide adequate detention time to allow the effluent from the ponds to meet State and Federal effluent limitations;

(C) Contain or treat the 10-year, 24-hour precipitation event ("design event") unless a lesser design event is approved by the regulatory authority based on terrain, climate, other site-specific conditions and on a demonstration by the operator that the effluent limitations of § 817.42 will be met;

(D) Provide a nonclogging dewatering device adequate to maintain the detention time required under paragraph (c)(1)(iii)(B) of this section;

(E) Minimize, to the extent possible, short circuiting;

(F) Provide periodic sediment removal sufficient to maintain adequate volume for the design event;

(G) Ensure against excessive settlement;

(H) Be free of sod, large roots, frozen soil, and acid- or toxic-forming coal-processing waste; and

(I) Be compacted properly.

(2)(i) Sedimentation ponds meeting the size or other qualifying criteria of § 776.216(a) of this title shall comply with all the requirements of that section, and shall have principal and emergency spillways that in combination will safely pass a 100-year, 6-hour precipitation event.

(ii) Sedimentation ponds not meeting the size or other qualifying criteria of § 77.216(a) of this title shall provide a combination of principal and emergency spillways that will safely discharge a 25-year, 6-hour precipitation event. Such ponds may use a single spillway if the spillway (A) is an open channel of nonerodable construction and capable of maintaining sustained flows; and (B) is not earth- or grass-lined.

(d) *Other treatment facilities.* (1) Other treatment facilities shall be designed to treat the 10-year, 24-hour precipitation even unless a lesser design event is approved by the regulatory authority based on terrain, climate, other site-specific conditions and a demonstration by the operator that the effluent limitations of § 817.42 will met.

(2) Other treatment facilities shall be designed in accordance with the applicable requirements of paragraph (c) of this section.

(e) *Exemptions.* Exemptions to the requirements of this section may be granted if—

(1) The disturbed drainage area within the total disturbed area is small; and

(2) The operator demonstrates that siltation structures and alternate sediment control measures are not necessary for drainage from the disturbed drainage areas to meet the effluent limitations under § 817.42 and the applicable State and Federal water quality standards for the receiving waters.

[48 FR 44051, Sept. 26, 1983]

§ 817.47 Hydrologic balance: Discharge structures.

Discharge from sedimentation ponds, permanent and temporary impoundments, coal processing waste dams and embankments, and diversions shall be controlled, by energy dissipators, riprap channels, and other devices, where necessary, to reduce erosion, to prevent deepening or enlargement of stream channels, and to minimize disturbance of the hydrologic balance. Discharge structures shall be designed according to standard engineering design procedures.

§ 817.49 Impoundments.

(a) *General requirements.* The requirements of this paragraph apply to both temporary and permanent impoundments.

(1) Impoundments meeting the criteria of § 77.216(a) of this title shall comply with the requirements of § 77.216 of this title and this section. The plan required to be submitted to the District Manager of MSHA under § 77.216 of this title shall also be submitted to the regulatory authority as part of the permit application.

(2) *Design certification.* The design of impoundments shall be certified in accordance with § 784.16(a) of this chapter as designed to meet the requirements of this part using current, prudent, engineering practices and any design criteria established by the regulatory authority. The qualified, registered, professional engineer or qualified, registered, professional, land surveyor shall be experienced in the design and construction or impoundments.

(3) *Stability.* Impoundments shall have a minimum static safety factor of 1.5 for the normal pool with steady seepage saturation conditions, and a seismic safety factor of at least 1.2.

(4) *Freeboard.* Impoundments shall have adequate freeboard to resist overtopping by waves and by sudden increases in storage volume.

(5) *Foundation.* (i) Foundation and abutments for the impounding structure shall be designed to be stable under all conditions of construction and operation of the impoundment. Sufficient foundation investigations and laboratory testing shall be performed in order to determine the design requirements for foundation stability.

(ii) All vegetative and organic materials shall be removed and foundations excavated and prepared to resist failure. Cutoff trenches shall be installed if necessary to ensure stability.

(6) Slope protection shall be provided to protect against surface erosion at the site and protect against sudden drawdown.

(7) Faces of embankments and surrounding areas shall be vegetated, except that faces where water is impounded may be riprapped or otherwise stabilized in accordance with accepted design practices.

(8) Impoundments shall include a combination of principal and emergency spillways which shall be designed and constructed to safely pass the design precipitation event specified in paragraph (b) or (c) of this section.

(9) The vertical portion of any remaining highwall shall be located far enough below the low-water line along the full extent of highwall to provide adequate safety and access for the proposed water users.

(10) *Inspections.* A qualified registered professional engineer or other qualified professional specialist, under the direction of the professional engineer, shall inspect the impoundment. The professional engineer or specialist shall be experienced in the construction of impoundments.

(i) Inspections shall be made regularly during construction, upon completion of construction, and at least yearly until removal of the structure or release of the performance bond.

(ii) The qualified registered professional engineer shall promptly, after each inspection, provide to the regulatory authority, a certified report that the impoundment has been constructed and maintained as designed and in accordance with the approved plan and this chapter. The report shall include discussion of any appearances of instability, structural weakness or other hazardous conditions, depth and elevation of any impounded waters, existing storage capacity, any existing or required monitoring procedures and instrumentation and any other aspects of the structure affecting stability.

(iii) A copy of the report shall be retained at or near the minesite.

(11) Impoundments subject to § 77.216 of this title must be examined in accordance with § 77.216-3 of this title. Other impoundments shall be examined at least quarterly by a qualified person designated by the operator for appearance of structural weakness and other hazardous conditions.

(12) *Emergency procedures.* If any examination or inspection discloses that a potential hazard exists, the person who examined the impoundment shall promptly inform the regulatory authority of the finding and of the emergency procedures formulated for public protection and remedial action. If adequate procedures cannot be formulated or implemented, the regulatory authority shall be notified immediately. The regulatory authority shall then notify the appropriate agencies that other emergency procedures are required to protect the public.

(b) *Permanent impoundments.* A permanent impoundment of water may be created, if authorized by the regulatory authority in the approved permit based upon the following demonstration:

(1) The size and configuration of such impoundment will be adequate for its intended purposes.

(2) The quality of impounded water will be suitable on a permanent basis for its intended use and, after reclamation, will meet applicable State and Federal water quality standards, and discharges from the impoundment will meet applicable effluent limitations and will not degrade the quality of receiving water below applicable State and Federal water quality standards.

(3) The water level will be sufficiently stable and be capable of supporting the intended use.

(4) Final grading will provide for adequate safety and access for proposed water users.

(5) The impoundment will not result in the diminution of the quality and quantity of water utilized by adjacent or surrounding landowners for agricultural, industrial, recreational, or domestic uses.

(6) The impoundment will be suitable for the approved postmining land use.

(7) The design precipitation event for the spillways for a permanent impoundment will be a 50-year, 6-hour precipitation event, or such larger event as the regulatory authority may require.

(c) *Temporary impoundments.* (1) The regulatory authority may authorize the construction of temporary impoundments as part of underground mining activities.

(2) The design precipitation event for the spillways for a temporary impoundment is a 25-year, 6-hour precipitation event, or such larger event as the regulatory authority may require.

[48 FR 44005, Sept. 26, 1983, as amended at 50 FR 16200, Apr. 24, 1985]

§ 817.56 Postmining rehabilitation of sedimentation ponds, diversions, impoundments, and treatment facilities.

Before abandoning a permit area or seeking bond release, the operator shall ensure that all temporary structures are removed and reclaimed, and that all permanent sedimentation ponds, diversions, impoundments, and treatment facilities meet the requirements of this chapter for permanent structures, have been maintained properly, and meet the requirements of the approved reclamation plan for permanent structures and impoundments. The operator shall renovate such structures if necessary to meet the requirements of this chapter and to conform to the approved reclamation plan.

[48 FR 44006, Sept. 26, 1983]

§ 817.57 Hydrologic balance: Stream buffer zones.

(a) No land within 100 feet of a perennial stream or an intermittent stream shall be disturbed by underground mining activities, unless the regulatory authority specifically authorizes underground mining activities closer to, or through, such a stream. The regulatory authority may authorize such activities only upon finding that—

(1) Underground mining activities will not cause or contribute to the violation of applicable State or Federal water quality standards and will not adversely affect the water quantity and quality or other environmental resources of the stream; and

(2) If there will be a temporary or permanent stream-channel diversion, it will comply with § 817.43.

(b) The area not to be disturbed shall be designated as a buffer zone, and the operator shall mark it as specified in § 817.11.

[48 FR 30328, June 30, 1983, as amended at 48 FR 44781, Sept. 30, 1983]

§ 817.59 Coal recovery.

Underground mining activities shall be conducted so as to maximize the utilization and conservation of the coal, while utilizing the best technology currently available to maintain environmental integrity, so that reaffecting the land in the future through surface coal mining operations is minimized.

§ 817.61 Use of explosives: General requirements.

(a) Sections 817.61—817.68 apply to surface blasting activities incident to underground coal mining, including, but not limited to, initial rounds of slopes and shafts.

(b) Each operator shall comply with all applicable State and Federal laws and regulations in the use of explosives.

(c) *Blasters.* (1) No later than 12 months after the blaster certification program for a State required by Part 850 of this chapter has been approved under the procedures of Subchapter C of this chapter, all surface blasting operations incident to underground mining in that State shall be conducted under the direction of a certified blaster. Before that time, all such blasting operations in that State shall be conducted by competent, experienced persons who understand the hazards involved.

(2) Certificates of blaster certification shall be carried by blasters or shall be on file at the permit area during blasting operations.

(3) A blaster and at least one other person shall be present at the firing of a blast.

(4) Any blaster who is responsible for conducting blasting operations at a blasting site shall:

(i) Be familiar with the site-specific performance standards; and

(ii) Give direction and on-the-job training to persons who are not certified and who are assigned to the blasting crew or assist in the use of explosives.

(d) *Blast design.* (1) An anticipated blast design shall be submitted if blasting operations will be conducted within—

(i) 1,000 feet of any building used as a dwelling, public building, school, church or community or institutional building; or

(ii) 500 feet of active or abandoned underground mines.

(2) The blast design may be presented as part of a permit application or at a time, before the blast, approved by the regulatory authority.

(3) The blast design shall contain sketches of the drill patterns, delay periods, and decking and shall indicate the type and amount of explosives to be used, critical dimensions, and the location and general description of structures to be protected, as well as a discussion of design factors to be used, which protect the public and meet the applicable airblast, flyrock, and ground-vibration standards in § 817.67.

(4) The blast design shall be prepared and signed by a certified blaster.

(5) The regulatory authority may require changes to the design submitted.

[48 FR 9492, Mar. 4, 1983, and 48 FR 9809, Mar. 8, 1983, as amended at 51 FR 19461, May 29, 1986]

§ 817.62 Use of explosives: Preblasting survey.

(a) At least 30 days before initiation of blasting, the operator shall notify, in writing, all residents or owners of dwellings or other structures located within ½ mile of the permit area how to request a preblasting survey.

(b) A resident or owner of a dwelling or structure within ½ mile of any part of the permit area may request a preblasting survey. This request shall be made, in writing, directly to the operator or to the regulatory authority, who shall promptly notify the operator. The operator shall promptly conduct a preblasting survey of the dwelling or structure and promptly prepare a written report of the survey. An updated survey of any additions, modifications, or renovations shall be performed by the operator if requested by the resident or owner.

(c) The operator shall determine the condition of the dwelling or structure and shall document any preblasting damage and other physical factors that could reasonably be affected by the blasting. Structures such as pipelines, cables, transmission lines, and cisterns, wells, and other water systems warrant special attention; however, the assessment of these structures may be limited to surface conditions and other readily available data.

(d) The written report of the survey shall be signed by the person who conducted the survey. Copies of the report shall be promptly provided to the regulatory authority and to the person requesting the survey. If the person requesting the survey disagrees with the contents and/or recommendations contained therein, he or she may submit to both the operator and the regulatory authority a detailed description of the specific areas of disagreement.

(e) Any surveys requested more than 10 days before the planned initiation of blasting shall be completed by the operator before the initiation of blasting.

[48 FR 9809, Mar. 8, 1983]

§ 817.64 Use of explosives: General performance standards.

(a) The operator shall notify, in writing, residents within ½ mile of the blasting site and local governments of the proposed times and locations of blasting operations. Such notice of times that blasting is to be conducted may be announced weekly, but in no case less than 24 hours before blasting will occur.

(b) Unscheduled blasts may be conducted only where public or operator health and safety so requires and for emergency blasting actions. When an operator conducts an unscheduled surface blast incidental to underground coal mining operations, the operator, using audible signals, shall notify residents within ½ mile of the blasting site and document the reason in accordance with § 817.68(p).

(c) All blasting shall be conducted between sunrise and sunset unless nighttime blasting is approved by the regulatory authority based upon a showing by the operator that the public will be protected from adverse noise and other impacts. The regulatory authority may specify more restrictive time periods for blasting.

[48 FR 9809, Mar. 8, 1983]

§ 817.66 Use of explosives: Blasting signs, warnings, and access control.

(a) *Blasting signs.* Blasting signs shall meet the specifications of § 817.11. The operator shall—

(1) Conspicuously place signs reading "Blasting Area" along the edge of any blasting area that comes within 100 feet of any public-road right-of-way, and at the point where any other road provides access to the blasting area; and

(2) At all entrances to the permit area from public roads or highways, place conspicuous signs which state "Warning! Explosives in Use," which clearly list and describe the meaning of the audible blast warning and all-clear signals that are in use, and which explain the marking of blasting areas and charged holes awaiting firing within the permit area.

(b) *Warnings.* Warning and all-clear signals of different character or pattern that are audible within a range of ½ mile from the point of the blast shall be given. Each person within the permit area and each person who resides or regularly works within ½ mile of the permit area shall be notified of the meaning of the signals in the blasting notification required in § 817.64(a).

(c) *Access control.* Access within the blasting areas shall be controlled to prevent presence of livestock or unauthorized persons during blasting and until an authorized representative of the operator has reasonably determined that—

(1) No unusual hazards, such as imminent slides or undetonated charges, exist; and

(2) Access to and travel within the blasting area can be safely resumed.

[48 FR 9810, Mar. 8, 1983]

§ 817.67 Use of explosives: Control of adverse effects.

(a) *General requirements.* Blasting shall be conducted to prevent injury to persons, damage to public or private property outside the permit area, adverse impacts on any underground mine, and change in the course, channel, or availability of surface or ground water outside the permit area.

(b) *Airblast*—(1) *Limits.* (i) Airblast shall not exceed the maximum limits listed below at the location of any dwelling, public building, school, church, or community or institutional building outside the permit area, except as provided in paragraph (e) of this section.

Lower frequency limit of measuring system, in Hz (±3 dB)	Maximum level, in dB
0.1 Hz or lower—flat response [1]	134 peak
2 Hz or lower—flat response	133 peak
6 Hz or lower—flat response	129 peak
C-weighted—slow response [1]	105 peak dBC

[1] Only when approved by the regulatory authority

(ii) If necessary to prevent damage, the regulatory authority may specify lower maximum allowable airblast levels than those of paragraph (b)(1)(i) of this section for use in the vicinity of a specific blasting operation.

(2) *Monitoring.* (i) The operator shall conduct periodic monitoring to ensure compliance with the airblast standards. The regulatory authority may require airblast measurement of any or all blasts and may specify the locations at which such measurements are taken.

(ii) The measuring systems used shall have an upper-end flat-frequency response of at least 200 Hz.

(c) *Flyrock.* Flyrock travelling in the air or along the ground shall not be cast from the blasting site—

(1) More than one-half the distance to the nearest dwelling or other occupied structure;

(2) Beyond the area of control required under § 817.66(c); or

(3) Beyond the permit boundary.

(d) *Ground vibration*—(1) *General.* In all blasting operations, except as otherwise authorized in paragraph (e) of this section, the maximum ground vibration shall not exceed the values approved by the regulatory authority. The maximum ground vibration for protected structures listed in paragraph (d)(2)(i) of this section shall be established in accordance with either the maximum peak-particle-velocity limits of paragraph (d)(2), the scaled-distance equation of paragraph (d)(3), the blasting-level chart of paragraph (d)(4) of this section, or by the regulatory authority under paragraph (d)(5) of this section. All structures in the vicinity of the blasting area, not listed in paragraph (d)(2)(i) of this section, such as water towers, pipelines and other utilities, tunnels, dams, impoundments, and underground mines shall be protected from damage by establishment of a maximum allowable limit on the ground vibration, submitted by the operator and approved by the regulatory authority before the initiation of blasting.

(2) *Maximum peak-particle velocity.* (i) The maximum ground vibration shall not exceed the following limits at the location of any dwelling, public building, school, church, or community or institutional building outside the permit area:

Distance (*D*), from the blasting site, in feet	Maximum allowable peak particle velocity (*V*max) for ground vibration, in inches/second [1]	Scaled-distance factor to be applied without seismic monitoring [2] (Ds)
0 to 300	1.25	50
301 to 5,000	1.00	55
5,001 and beyond	0.75	65

[1] Ground vibration shall be measured as the particle velocity. Particle velocity shall be recorded in three mutually perpendicular directions. The maximum allowable peak particle velocity shall apply to each of the three measurements.

[2] Applicable to the scaled-distance equation of Paragraph (d)(3)(i) of this section.

(ii) A seismographic record shall be provided for each blast.

(3) *Scaled-distance equation.* (i) An operator may use the scaled-distance equation, $W = (D/Ds)^2$, to determine the allowable charge weight of explosives to be detonated in any 8-millisecond period, without seismic monitoring; where W = the maximum weight of explosives, in pounds; D = the distance, in feet, from the blasting site to the nearest protected structure; and Ds = the scaled-distance factor, which may initially be approved by the regulatory authority using the values for scaled-distance factor listed in paragraph (d)(2)(i) of this section.

(ii) The development of a modified scaled-distance factor may be authorized by the regulatory authority on receipt of a written request by the operator, supported by seismographic records of blasting at the minesite. The modified scaled-distance factor shall be determined such that the particle velocity of the predicted ground vibration will not exceed the prescribed maximum allowable peak particle velocity of paragraph (d)(2)(i) of this section, at a 95-percent confidence level.

(4) *Blasting-level chart.* (i) An operator may use the ground-vibration limits in Figure 1 to determine the maximum allowable ground vibration.

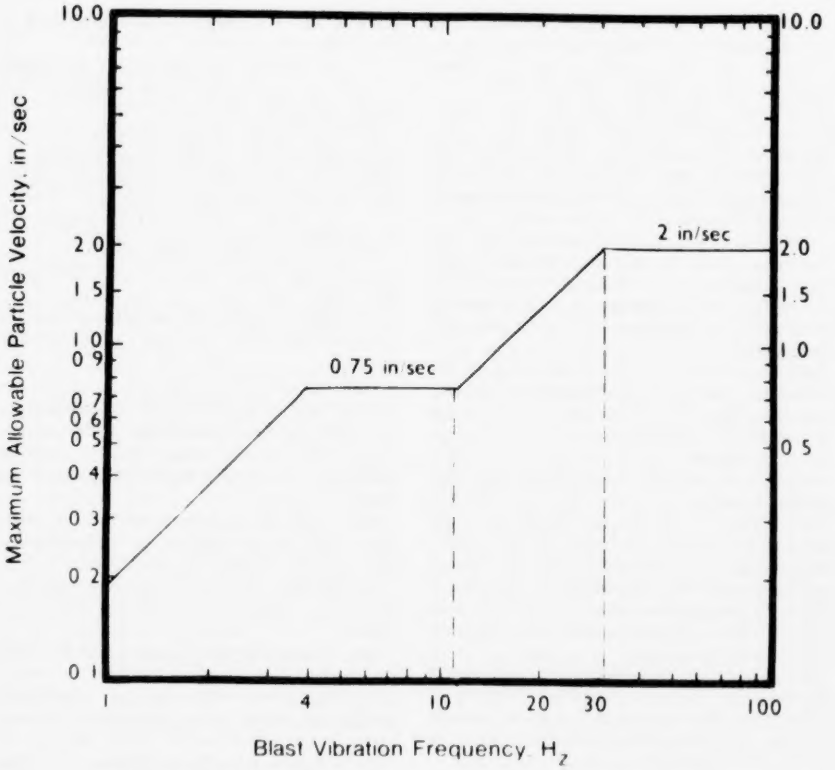

Figure 1 Alternative blasting level criteria
(Source: Modified from figure B-1, Bureau of Mines, RI8507)

(ii) If the Figure 1 limits are used, a seismographic record including both particle velocity and vibration-frequency levels shall be provided for each blast. The method for the analysis of the predominant frequency contained in the blasting records shall be approved by the regulatory authority before application of this alternative blasting criterion.

(5) The maximum allowable ground vibration shall be reduced by the regulatory authority beyond the limits otherwise provided by this section, if determined necessary to provide damage protection.

(6) The regulatory authority may require an operator to conduct seismic monitoring of any or all blasts and may specify the location at which the measurements are taken and the degree of detail necessary in the measurement.

(e) The maximum airblast and ground-vibration standards of paragraphs (b) and (d) of this section shall not apply at the following locations:

(1) At structures owned by the permittee and not leased to another person,

(2) At structures owned by the permittee and leased to another person, if a written waiver by the lessee is submitted to the regulatory authority before blasting.

[48 FR 9810, Mar. 8, 1983, as amended at 48 FR 44781, Sept. 30, 1983]

§ 817.68 Use of explosives: Records of blasting operations.

The operator shall retain a record of all blasts for at least 3 years. Upon request, copies of these records shall be made available to the regulatory authority and to the public for inspection. Such records shall contain the following data:

(a) Name of the operator conducting the blast.

(b) Location, date, and time of the blast.

(c) Name, signature, and certification number of the blaster conducting the blast.

(d) Identification, direction, and distance, in feet, from the nearest blast hole to the nearest dwelling, public building, school, church, community or institutional building outside the permit area, except those described in § 817.67 (e).

(e) Weather conditions, including those which may cause possible adverse blasting effects.

(f) Type of material blasted.

(g) Sketches of the blast pattern including number of holes, burden, spacing, decks, and delay pattern.

(h) Diameter and depth of holes.

(i) Types of explosives used.

(j) Total weight of explosives used per hole.

(k) The maximum weight of explosives detonated in an 8-millisecond period.

(l) Initiation system.

(m) Type and length of stemming.

(n) Mats or other protections used.

(o) Seismographic and airblast records, if required, which shall include—

(1) Type of instrument, sensitivity, and calibration signal or certification of annual calibration;

(2) Exact location of instrument and the date, time, and distance from the blast;

(3) Name of the person and firm taking the reading;

(4) Name of the person and firm analyzing the seismographic record; and

(5) The vibration and/or airblast level recorded.

(p) Reasons and conditions for each unscheduled blast.

[48 FR 9811, Mar. 8, 1983]

§ 817.71 Disposal of excess spoil: General requirements.

(a) *General.* Excess spoil shall be placed in designated disposal areas within the permit area, in a controlled manner to—

(1) Minimize the adverse effects of leachate and surface water runoff from the fill on surface and ground waters;

(2) Ensure mass stability and prevent mass movement during and after construction; and

(3) Ensure that the final fill is suitable for reclamation and revegetation compatible with the natural surroundings and the approved postmining land use.

(b) *Design certification.* (1) The fill and appurtenant structures shall be designed using current, prudent engineering practices and shall meet any design criteria established by the regulatory authority. A qualified registered professional engineer experienced in the design of earth and rock fills shall certify the design of the fill and appurtenant structures.

(2) The fill shall be designed to attain a minimum long-term static safety factor of 1.5. The foundation and abutments of the fill must be stable under all conditions of construction.

(c) *Location.* The disposal area shall be located on the most moderately sloping and naturally stable areas available, as approved by the regulatory authority, and shall be placed, where possible, upon or above a natural terrace, bench, or berm, if such placement provides additional stability and prevents mass movement.

(d) *Foundation.* (1) Sufficient foundation investigations, as well as any necessary laboratory testing of foundation material, shall be performed in order to determine the design requirements for foundation stability. The analyses of foundation conditions shall take into consideration the effect of underground mine workings, if any, upon the stability of the fill and appurtenant structures.

(2) When the slope in the disposal area is in excess of 2.8h:lv (36 percent), or such lesser slope as may be designated by the regulatory authority based on local conditions, keyway cuts (excavations to stable bedrock) or rock toe buttresses shall be constructed to ensure stability of the fill. Where the toe of the spoil rests on a downslope, stability analyses shall be performed in accordance with § 784.19 of this chapter to determine the size of rock toe buttresses and keyway cuts.

(e) *Placement of excess spoil.* (1) All vegetative and organic materials shall be removed from the disposal area prior to placement of excess spoil. Topsoil shall be removed, segregated and stored or redistributed in accordance with § 817.22. If approved by the regulatory authority, organic material may be used as mulch or may be included in the topsoil to control erosion, promote growth of vegetation or increase the moisture retention of the soil.

(2) Excess spoil shall be transported and placed in a controlled manner in horizontal lifts not exceeding 4 feet in thickness; concurrently compacted as necessary to ensure mass stability and to prevent mass movement during and after construction; graded so that surface and subsurface drainage is compatible with the natural surroundings; and covered with topsoil or substitute material in accordance with § 817.22 of this chapter. The regulatory authority may approve a design which incorporates placement of excess spoil in horizontal lifts other than 4 feet in thickness when it is demonstrated by the operator and certified by a qualified registered professional engineer that the design will ensure the stability of the fill and will meet all other applicable requirements.

(3) The final configuration of the fill shall be suitable for the approved postmining land use. Terraces may be constructed on the outslope of the fill if required for stability, control of erosion, to conserve soil moisture, or to facilitate the approved postmining land use. The grade of the outslope between terrace benches shall not be steeper than 2h:lv (50 percent).

(4) No permanent impoundments are allowed on the completed fill. Small depressions may be allowed by the regulatory authority if they are needed to retain moisture, minimize erosion, create and enhance wildlife habitat, or assist revegetation; and if they are not incompatible with the stability of the fill.

(5) Excess spoil that is acid- or toxic-forming or combustible shall be adequately covered with nonacid, nontoxic and noncombustible material, or treated, to control the impact on surface and ground water in accordance with § 817.41, to prevent sustained combustion, and to minimize adverse effects on plant growth and the approved postmining land use.

(f) *Drainage control.* (1) If the disposal area contains springs, natural or manmade water courses, or wet weather seeps, the fill design shall include diversions and underdrains as necessary to control erosion, prevent water infiltration into the fill, and ensure stability.

(2) Diversions shall comply with the requirements of § 817.43.

(3) Underdrains shall consist of durable rock or pipe, be designed and constructed using current, prudent engineering practices and meet any design criteria established by the regulatory authority. The underdrain system shall be designed to carry the anticipated seepage of water due to rainfall away from the excess spoil fill and from seeps and springs in the foundation of the disposal area and shall be protected from piping and contamination by an adequate filter. Rock underdrains shall be constructed of durable, nonacid-, nontoxic-forming rock (*e.g.*, natural sand and gravel, sandstone, limestone, or other durable rock) that does not slake in water or degrade to soil materials, and which is free of coal, clay or other nondurable material. Perforated pipe underdrains shall be corrosion resistant and shall have characteristics consistent with the long-term life of the fill.

(g) *Surface area stabilization.* Slope protection shall be provided to minimize surface erosion at the site. All disturbed areas, including diversion channels that are not riprapped or otherwise protected, shall be revegetated upon completion of construction.

(h) *Inspections.* A qualified registered professional engineer or other qualified professional specialist under the direction of the professional engineer, shall periodically inspect the fill during construction. The professional engineer or specialist shall be experienced in the construction of earth and rock fills.

(1) Such inspections shall be made at least quarterly throughout construction and during critical construction periods. Critical construction periods shall include at a minimum: (i) Foundation preparation, including the removal of all organic material and topsoil; (ii) placement of underdrains and protective filter systems; (iii) installation of final surface drainage systems; and (iv) the final graded and revegetated fill. Regular inspections by the engineer or specialist shall also be conducted during placement and compaction of fill materials.

(2) The qualified registered professional engineer shall provide a certified report to the regulatory authority promptly after each inspection that the fill has been constructed and maintained as designed and in accordance with the approved plan and this chapter. The report shall include appearances of instability, structural weakness, and other hazardous conditions.

(3)(i) The certified report on the drainage system and protective filters shall include color photographs taken during and after construction, but before underdrains are covered with excess spoil. If the underdrain system is constructed in phases, each phase shall be certified separately.

(ii) Where excess durable rock spoil is placed in single or multiple lifts such that the underdrain system is constructed simultaneously with excess spoil placement by the natural segregation of dumped materials, in accordance with § 817.73, color photographs shall be taken of the underdrain as the underdrain system is being formed.

(iii) The photographs accompanying each certified report shall be taken in adequate size and number with enough terrain or other physical features of the site shown to provide a relative scale to the photographs and to specifically and clearly identify the site.

(4) A copy of each inspection report shall be retained at or near the mine site.

(i) *Coal mine waste.* Coal mine waste may be disposed of in excess spoil fills if approved by the regulatory authority and, if such waste is—

(1) Placed in accordance with § 817.83;

(2) Nontoxic and nonacid forming; and

(3) Of the proper characteristics to be consistent with the design stability of the fill.

(j) *Underground disposal.* Excess spoil may be disposed of in underground mine workings, but only in accordance with a plan approved by the regulatory authority and MSHA under § 784.25 of this chapter.

(k) *Face-up operations.* Spoil resulting from face-up operations for underground coal mine development may be placed at drift entries as part of a cut and fill structure, if the structure is less than 400 feet in horizontal length, and designed in accordance with § 817.71.

[48 FR 32927, July 19, 1983, as amended at 48 FR 44781, Sept. 30, 1983]

§ 817.72 Disposal of excess spoil: Valley fill/head-of-hollow fills.

Valley fills and head-of-hollow fills shall meet the requirements of § 817.71 and the additional requirements of this section.

(a) *Drainage control.* (1) The top surface of the completed fill shall be graded such that the final slope after settlement will be toward properly designed drainage channels. Uncontrolled surface drainage may not be directed over the outslope of the fill.

(2) Runoff from areas above the fill and runoff from the surface of the fill shall be diverted into stabilized diversion channels designed to meet the requirements of § 817.43 and to safely pass the runoff from a 100-year, 6-hour precipitation event.

(b) *Rock-core chimney drains.* A rock-core chimney drain may be used in a head-of-hollow fill, instead of the underdrain and surface diversion system normally required, as long as the fill is not located in an area containing intermittent or perennial streams. A rock-core chimney drain may be used in a valley fill if the fill does not exceed 250,000 cubic yards of material and upstream drainage is diverted around the fill. The alternative rock-core chimney drain system shall be incorporated into the design and construction of the fill as follows:

(1) The fill shall have, along the vertical projection of the main buried stream channel or rill, a vertical core of durable rock at least 16 feet thick which shall extend from the toe of the fill to the head of the fill, and from the base of the fill to the surface of the fill. A system of lateral rock underdrains shall connect this rock core to each area of potential drainage or seepage in the disposal area. The underdrain system and rock core shall be designed to carry the anticipated seepage of water due to rainfall away from the excess spoil fill and from seeps and springs in the foundation of the disposal area. Rocks used in the rock core and underdrains shall meet the requirements of § 817.71(f).

(2) A filter system to ensure the proper long-term functioning of the rock core shall be designed and constructed using current, prudent engineering practices.

(3) Grading may drain surface water away from the outslope of the fill and toward the rock core. In no case, however, may intermittent or perennial streams be diverted into the rock core. The maximum slope of the top of the fill shall be 33h:1v (3 percent). A drainage pocket may be maintained at the head of the fill during and after construction, to intercept surface runoff and discharge the runoff through or over the rock drain, if stability of the fill is not impaired. In no case shall this pocket or sump have a potential capacity for impounding more than 10,000 cubic feet of water. Terraces on the fill shall be graded with a 3 to 5 percent grade toward the fill and a 1 percent slope toward the rock core.

[48 FR 32928, July 19, 1983]

§ 817.73 Disposal of excess spoil: Durable rock fills.

The regulatory authority may approve the alternative method of disposal of excess durable rock spoil by gravity placement in single or multiple lifts, provided the following conditions are met:

(a) Except as provided in this section, the requirements of § 817.71 are met.

(b) The excess spoil consists of at least 80 percent, by volume, durable, nonacid- and nontoxic-forming rock (*e.g.*, sandstone or limestone) that does not slake in water and will not degrade to soil material. Where used, noncemented clay shale, clay spoil, soil or other nondurable excess spoil material shall be mixed with excess durable rock spoil in a controlled manner such that no more than 20 percent of the fill volume, as determined by tests performed by a registered engineer and approved by the regulatory authority, is not durable rock.

(c) A qualified registered professional engineer certifies that the design will ensure the stability of the fill and meet all other applicable requirements.

(d) The fill is designed to attain a minimum long-term static safety factor of 1.5, and an earthquake safety factor of 1.1.

(e) The underdrain system may be constructed simultaneously with excess spoil placement by the natural segregation of dumped materials, provided the resulting underdrain system is capable of carrying anticipated seepage of water due to rainfall away from the excess spoil fill and from seeps and springs in the foundation of the disposal area and the other requirements for drainage control are met.

(f) Surface water runoff from areas adjacent to and above the fill is not allowed to flow onto the fill and is diverted into stabilized diversion channels designed to meet the requirements of § 817.43 and to safely pass the runoff from a 100-year, 6-hour precipitation event.

[48 FR 32929, July 19, 1983]

§ 817.74 Disposal of excess spoil: Preexisting benches.

(a) The regulatory authority may approve the disposal of excess spoil through placement on preexisting benches, provided that all the standards set forth in § 817.71 (a), (b)(1), (d) through (i) and the requirements of this section are met.

(b) Excess spoil shall be placed only on the solid portion of the preexisting bench.

(c) The fill shall be designed, using current, prudent engineering practices, to attain a long-term static safety factor of 1.3 for all portions of the fill.

(d) The preexisting bench shall be backfilled and graded to—

(1) Achieve the most moderate slope possible which does not exceed the angle of repose, and

(2) Eliminate the highwall to the maximum extent technically practical.

(e) Disposal of excess spoil from an upper actively mined bench to a lower preexisting bench by means of gravity transport may be approved by the regulatory authority provided that—

(1) The gravity transport courses are determined on a site-specific basis by the operator as part of the permit application and approved by the regulatory authority to minimize hazards to health and safety and to ensure that damage will be minimized between the benches, outside the set course, and downslope of the lower bench should excess spoil accidentally move;

(2) All gravity transported excess spoil, including that excess spoil immediately below the gravity transport courses and any preexisting spoil that is disturbed, is rehandled and placed in horizontal lifts in a controlled manner, concurrently compacted as necessary to ensure mass stability and to prevent mass movement, and graded to allow surface and subsurface drainage to be compatible with the natural surroundings and to ensure a minimum long-term static safety factor of 1.3. Excess spoil on the bench prior to the current mining operation that is not disturbed need not be rehandled except where necessary to ensure stability of the fill;

(3) A safety berm is constructed on the solid portion of the lower bench prior to gravity transport of the excess spoil. Where there is insufficient material on the lower bench to construct a safety berm, only that amount of excess spoil necessary for the construction of the berm may be gravity transported to the lower bench prior to construction of the berm:

(4) Excess spoil shall not be allowed on the downslope below the upper bench except on designated gravity transport courses properly prepared according to § 817.22. Upon completion of the fill, no excess spoil shall be allowed to remain on the designated gravity transport course between the two benches and each transport course shall be reclaimed in accordance with the requirements of this part.

[48 FR 32929, July 19, 1983, as amended at 48 FR 44781, Sept. 30, 1983]

§ 817.81 Coal mine waste: General requirements.

(a) *General.* All coal mine waste shall be placed in new or existing disposal areas within a permit area, which are approved by the regulatory authority for this purpose. Coal mine waste shall be placed in a controlled manner to—

(1) Minimize adverse effects of leachate and surface-water runoff on surface and ground water quality and quantity;

(2) Ensure mass stability and prevent mass movement during and after construction;

(3) Ensure that the final disposal facility is suitable for reclamation and revegetation compatible with the natural surroundings and the approved postmining land use;

(4) Not create a public hazard; and

(5) Prevent combustion.

(b) Coal mine waste materials from activities located outside a permit area may be disposed of in the permit area only if approved by the regulatory authority. Approval shall be based upon a showing that such disposal will be in accordance with the standards of this section.

(c) *Design certification.* (1) The disposal facility shall be designed using current, prudent engineering practices and shall meet any design criteria established by the regulatory authority. A qualified registered professional engineer, experienced in the design of similar earth and waste structures, shall certify the design of the disposal facility.

(2) The disposal facility shall be designed to attain a minimum long-term static safety factor of 1.5. The foundation and abutments must be stable under all conditions of construction.

(d) *Foundation.* Sufficient foundation investigations, as well as any necessary laboratory testing of foundation material, shall be performed in order to determine the design requirements for foundation stability. The analyses of the foundation conditions shall take into consideration the effect of underground mine workings, if any, upon the stability of the disposal facility.

(e) *Emergency procedures.* If any examination or inspection discloses that a potential hazard exists, the regulatory authority shall be informed promptly of the finding and of the emergency procedures formulated for public protection and remedial action. If adequate procedures cannot be formulated or implemented, the regulatory authority shall be notified immediately. The regulatory authority shall then notify the appropriate agencies that other emergency procedures are required to protect the public.

(f) *Underground disposal.* Coal mine waste may be disposed of in underground mine workings, but only in accordance with a plan approved by the regulatory authority and MSHA under § 784.25 of this chapter.

[48 FR 44030, Sept. 26, 1983]

§ 817.83 Coal mine waste: Refuse piles.

Refuse piles shall meet the requirements of § 817.81, the additional requirements of this section, and the requirements of §§ 77.214 and 77.215 of this title.

(a) *Drainage control.* (1) If the disposal area contains springs, natural or manmade water courses, or wet weather seeps, the design shall include diversions and underdrains as necessary to control erosion, prevent water infiltration into the disposal facility and ensure stability.

(2) Uncontrolled surface drainage may not be diverted over the outslope of the refuse pile. Runoff from areas above the refuse pile and runoff from the surface of the refuse pile shall be diverted into stabilized diversion channels designed to meet the requirements of § 817.43 to safely pass the runoff from a 100-year, 6-hour precipitation event. Runoff diverted from undisturbed areas need not be commingled with runoff from the surface of the refuse pile.

(3) Underdrains shall comply with the requirements of § 817.71(f)(3).

(b) *Surface area stabilization.* Slope protection shall be provided to minimize surface erosion at the site. All disturbed areas, including diversion channels that are not riprapped or otherwise protected, shall be revegetated upon completion of construction.

(c) *Placement.* (1) All vegetative and organic materials shall be removed from the disposal area prior to placement of coal mine waste. Topsoil shall be removed, segregated and stored or redistributed in accordance with § 817.22. If approved by the regulatory authority, organic material may be used as mulch or may be included in the topsoil to control erosion, promote growth of vegetation or increase the moisture retention of the soil.

(2) The final configuration of the refuse pile shall be suitable for the approved postmining land use. Terraces may be constructed on the outslope of the refuse pile if required for stability, control of erosion, conservation of soil moisture, or facilitation of the approved postmining land use. The grade of the outslope between terrace benches shall not be steeper than 2h:1v (50 percent).

(3) No permanent impoundments shall be allowed on the completed refuse pile. Small depressions may be allowed by the regulatory authority if they are needed to retain moisture, minimize erosion, create and enhance wildlife habitat, or assist revegetation, and if they are not incompatible with stability of the refuse pile.

(4) Following final grading of the refuse pile, the coal mine waste shall be covered with a minimum of 4 feet of the best available, nontoxic and noncombustible material, in a manner that does not impede drainage from the underdrains. The regulatory authority may allow less than 4 feet of cover material based on physical and chemical analyses which show that the requirements of §§ 817.111 through 817.116 will be met.

(d) *Inspections.* A qualified registered professional engineer, or other qualified professional specialist under the direction of the professional engineer, shall inspect the refuse pile during construction. The professional engineer or specialist shall be experienced in the construction of similar earth and waste structures.

(1) Such inspection shall be made at least quarterly throughout construction and during critical construction periods. Critical construction periods shall include at a minimum: (i) Foundation preparation including the removal of all organic material and topsoil; (ii) placement of underdrains and protective filter systems; (iii) installation of final surface drainage systems; and (iv) the final graded and revegetated facility. Regular inspections by the engineer or specialist shall also be conducted during placement and compaction of coal mine waste materials. More frequent inspections shall be conducted if a danger of harm exists to the public health and safety or the environment. Inspections shall continue until the refuse pile has been finally graded and revegetated or until a later time as required by the regulatory authority.

(2) The qualified registered professional engineer shall provide a certified report to the regulatory authority promptly after each inspection that the refuse pile has been constructed and maintained as designed and in accordance with the approved plan and this chapter. The report shall include appearances of instability, structural weakness, and other hazardous conditions.

(3) The certified report on the drainage system and protective filters shall include color photographs taken during and after construction, but before underdrains are covered with coal mine waste. If the underdrain system is constructed in phases, each phase shall be certified separately. The photographs accompanying each certified report shall be taken in adequate size and number with enough terrain or other physical features of the site shown to provide a relative scale to the photographs and to specifically and clearly identify the site.

(4) A copy of each inspection report shall be retained at or near the minesite.

[48 FR 44030, Sept. 26, 1983]

§ 817.84 Coal mine waste: Impounding structures.

New and existing impounding structures constructed of coal mine waste or intended to impound coal mine waste shall meet the requirements of § 817.81.

(a) Coal mine waste shall not be used for construction of impounding structures unless it has been demonstrated to the regulatory authority that the stability of such a structure conforms to the requirements of this part and the use of coal mine waste will not have a detrimental effect on downstream water quality or the environment due to acid seepage through the impounding structure. The stability of the structure and the potential impact of acid mine seepage through the impounding structure and shall be discussed in detail in the design plan submitted to the regulatory authority in accordance with § 780.25 of this chapter.

(b)(1) Each impounding structure constructed of coal mine waste or intended to impound coal mine waste shall be designed, constructed and maintained in accordance with § 817.49 (a) and (c). Such structures may not be retained permanently as part of the approved postmining land use.

(2) If an impounding structure constructed of coal mine waste or intended to impound coal mine waste meets the criteria of § 77.216(a) of this title, the combination of principal and emergency spillways shall be able to safely pass the 100-year, 6-hour design precipitation event.

(c) Spillways and outlet works shall be designed to provide adequate protection against erosion and corrosion. Inlets shall be protected against blockage.

(d) *Drainage control.* Runoff from areas above the disposal facility or runoff from the surface of the facility that may cause instability or erosion of the impounding structure shall be diverted into stabilized diversion channels designed to meet the requirements of § 817.43 and designed to safely pass the runoff from a 100-year, 6-hour design precipitation event.

(e) Impounding structures constructed of or impounding coal mine waste shall be designed so that at least 90 percent of the water stored during the design precipitation event can be removed within a 10-day period.

[48 FR 44031, Sept. 26, 1983]

§ 817.87 Coal mine waste: Burning and burned waste utilization.

(a) Coal mine waste fires shall be extinguished by the person who conducts the surface mining activities, in accordance with a plan approved by the regulatory authority and the Mine Safety and Health Administration. The plan shall contain, at a minimum, provisions to ensure that only those persons authorized by the operator, and who have an understanding of the procedures to be used, shall be involved in the extinguishing operations.

(b) No burning or unburned coal mine waste shall be removed from a permitted disposal area without a removal plan approved by the regulatory authority. Consideration shall be given to potential hazards to persons working or living in the vicinity of the structure.

[48 FR 44031, Sept. 26, 1983]

§ 817.89 Disposal of noncoal mine wastes.

(a) Noncoal mine wastes including, but not limited to grease, lubricants, paints, flammable liquids, garbage, abandoned mining machinery, lumber and other combustible materials generated during mining activities shall be placed and stored in a controlled manner in a designated portion of the permit area. Placement and storage shall ensure that leachate and surface runoff do not degrade surface or ground water, that fires are prevented, and that the area remains stable and suitable for reclamation and revegetation compatible with the natural surroundings.

(b) Final disposal of noncoal mine wastes shall be in a designated disposal site in the permit area or a State-approved solid waste disposal area. Disposal sites in the permit area shall be designed and constructed to ensure that leachate and drainage from the noncoal mine waste area does not degrade surface or underground water. Wastes shall be routinely compacted and covered to prevent combustion and wind-borne waste. When the disposal is completed, a minimum of 2 feet of soil cover shall be placed over the site, slopes stabilized, and revegetation acomplished in accordance with §§ 817.111 through 817.116. Operation of the disposal site shall be conducted in accordance with all local, State, and Federal requirements.

(c) At no time shall any noncoal mine waste be deposited in a refuse pile or impounding structure, nor shall any excavation for a noncoal mine waste disposal site be located within 8 feet of any coal outcrop or coal storage area.

(d) Notwithstanding any other provision to this chapter, any noncoal mine waste defined as "hazardous" under § 3001 of the Resource Conservation and Recovery Act (RCRA) (Pub. L. 94-580, as amended) and 40 CFR Part 261 shall be handled in accordance with the requirements of Subtitle C of RCRA and any implementing regulations.

[48 FR 44031, Sept. 26, 1983]

§ 817.95 Stabilization of surface areas.

(a) All exposed surface areas shall be protected and stabilized to effectively control erosion and air pollution attendant to erosion.

(b) Rills and gullies which form in areas that have been regraded and topsoiled and which either (1) disrupt the approved postmining land use or the reestablishment of the vegetative cover, or (2) cause or contribute to a violation of water quality standards for receiving streams; shall be filled, regraded, or otherwise stabilized; topsoil shall be replaced; and the areas shall be reseeded or replanted.

[48 FR 1163, Jan. 10, 1983]

§ 817.97 Protection of fish, wildlife, and related environmental values.

(a) The operator shall, to the extent possible using the best technology currently available, minimize disturbances and adverse impacts on fish, wildlife, and related environmental values and shall achieve enhancement of such resources where practicable.

(b) *Endangered and threatened species.* No underground mining activity shall be conducted which will jeopardize the continued existence of endangered or threatened species listed by the Secretary or which will result in the destruction or adverse modification of designated critical habitats of such species in violation of the Endangered Species Act (16 U.S.C. 1531 *et seq.*). The operator shall promptly report to the regulatory authority any endangered or threatened species within the permit area of which the operator becomes aware. Upon notification, the regulatory authority shall consult with appropriate State and Federal fish and wildlife agencies and, after consultation, shall identify whether, and under what conditions, the operator may proceed.

(c) *Bald and golden eagles.* No underground mining activity shall be conducted in a manner which would result in the unlawful taking of a bald or golden eagle, its nest, or any of its eggs. The operator shall promptly report to the regulatory authority any golden or bald eagle nest within the permit area of which the operator becomes aware. Upon notification, the regulatory authority shall consult with the U.S. Fish and Wildlife Service and also, where appropriate, the State fish and wildlife agency and, after consultation, shall identify whether, and under what conditions, the operator may proceed.

(d) Nothing in this chapter shall authorize the taking of an endangered or threatened species or a bald or golden eagle, its nest, or any of its eggs in violation of the Endangered Species Act of 1973, as amended, 16 U.S.C. 1531 *et seq.*, or the Bald Eagle Protection Act, as amended, 16 U.S.C. 668 *et seq.*

(e) Each operator shall, to the extent possible using the best technology currently available—

(1) Ensure that electric powerlines and other transmission facilities used for, or incidental to, underground mining activities on the permit area are designed and constructed to minimize electrocution hazards to raptors, except where the regulatory authority determines that such requirements are unnecessary;

(2) Locate and operate haul and access roads so as to avoid or minimize impacts on important fish and wildlife species or other species protected by State or Federal law; and

(3) Design fences, overland conveyors, and other potential barriers to permit passage for large mammals, except where the regulatory authority determines that such requirements are unnecessary.

(f) *Wetlands and habitats of unusually high value for fish and wildlife.* The operator conducting underground mining activities shall avoid disturbances to, enhance where practicable, restore, or replace, wetlands, and riparian vegetation along rivers and streams and bordering ponds and lakes. Underground mining activities shall avoid disturbances to, enhance where practicable, or restore, habitats of unusually high value for fish and wildlife.

(g) Where fish and wildlife habitat is to be a postmining land use, the plant species to be used on reclaimed areas shall be selected on the basis of the following criteria:

(1) Their proven nutritional value for fish or wildlife.

(2) Their use as cover for fish or wildlife.

(3) Their ability to support and enhance fish or wildlife habitat after the release of performance bonds. The selected plants shall be grouped and distributed in a manner which optimizes edge effect, cover, and other benefits to fish and wildlife.

(h) Where cropland is to be the postmining land use, and where appropriate for wildlife- and crop-management practices, the operator shall intersperse the fields with trees, hedges, or fence rows throughout the harvested area to break up large blocks of monoculture and to diversify habitat types for birds and other animals.

(i) Where residential, public service, or industrial uses are to be the postmining land use, and where consistent with the approved postmining land use, the operator shall intersperse reclaimed lands with greenbelts utilizing species of grass, shrubs, and trees useful as food and cover for wildlife.

[48 FR 30328, June 30, 1983]

§ 817.99 Slides and other damage.

At any time a slide occurs which may have a potential adverse effect on public, property, health, safety, or the environment, the person who conducts the underground mining activities shall notify the regulatory authority by the fastest available means and comply with any remedial measures required by the regulatory authority.

§ 817.100 Contemporaneous reclamation.

Reclamation efforts, including but not limited to backfilling, grading, topsoil replacement, and revegetation, on all areas affected by surface impacts incident to an underground coal mine shall occur as contemporaneously as practicable with mining operations, except when such mining operations are conducted in accordance with a variance for concurrent surface and underground mining activities issued under § 785.18 of this chapter. The regulatory authority may establish schedules that define contemporaneous reclamation.

[48 FR 24652, June 1, 1983]

§ 817.102 Backfilling and grading: General requirements.

(a) Disturbed areas shall be backfilled and graded to—

(1) Achieve the approximate original contour, except as provided in paragraph (k) of this section;

(2) Eliminate all highwalls, spoil piles, and depressions, except as provided in paragraph (h) (small depressions) and in paragraph (k)(2) (previously mined highwalls) of this section;

(3) Achieve a postmining slope that does not exceed either the angle of repose or such lesser slope as is necessary to achieve a minimum long-term static safety factor of 1.3 and to prevent slides;

(4) Minimize erosion and water pollution both on and off the site; and

(5) Support the approved postmining land use.

(b) Spoil, except as provided in paragraph (l) of this section, and except excess spoil disposed of in accordance with §§ 817.71 through 817.74, shall be returned to the mined-out surface area.

(c) Spoil and waste materials shall be compacted where advisable to ensure stability or to prevent leaching of toxic materials.

(d) Spoil may be placed on the area outside the mined-out surface area in nonsteep slope areas to restore the approximate original contour by blending the spoil into the surrounding terrain if the following requirements are met:

(1) All vegetative and organic material shall be removed from the area.

(2) The topsoil on the area shall be removed, segregated, stored, and redistributed in accordance with § 817.22.

(3) The spoil shall be backfilled and graded on the area in accordance with the requirements of this section.

(e) Disposal of coal processing waste and underground development waste in the mined-out surface area shall be in accordance with §§ 817.81 and

817.83, except that a long-term static safety factor of 1.3 shall be achieved.

(f) Exposed coal seams, acid- and toxic-forming materials, and combustible materials exposed, used, or produced during mining shall be adequately covered with nontoxic and noncombustible materials, or treated, to control the impact on surface and ground water in accordance with § 817.41, to prevent sustained combustion, and to minimize adverse effects on plant growth and the approved postmining land use.

(g) Cut-and-fill terraces may be allowed by the regulatory authority where—

(1) Needed to conserve soil moisture, ensure stability, and control erosion on final-graded slopes, if the terraces are compatible with the approved postmining land use; or

(2) Specialized grading, foundation conditions, or roads are required for the approved postmining land use, in which case the final grading may include a terrace of adequate width to ensure the safety, stability, and erosion control necessary to implement the postmining land-use plan.

(h) Small depressions may be constructed if they are needed to retain moisture, minimize erosion, create and enhance wildlife habitat, or assist revegetation.

(i) Permanent impoundments may be approved if they meet the requirements of §§ 817.49 and 817.56 and if they are suitable for the approved postmining land use.

(j) Preparation of final-graded surfaces shall be conducted in a manner that minimizes erosion and provides a surface for replacement of topsoil that will minimize slippage.

(k) The postmining slope may vary from the approximate original contour when approval is obtained from the regulatory authority for—

(1) A variance from approximate original contour requirements in accordance with § 785.16 of this chapter; or

(2) Incomplete elimination of highwalls in previously mined areas in accordance with § 817.106.

(l) Regrading of settled and revegetated fills to achieve approximate original contour at the conclusion of underground mining activities shall not be required if the conditions of paragraph (l)(1) or (l)(2) of this section are met.

(1)(i) Settled and revegetated fills shall be composed of spoil or non-acid- or non-toxic-forming underground development waste.

(ii) The spoil or underground development waste shall not be located so as to be detrimental to the environment, to the health and safety of the public, or to the approved postmining land use.

(iii) Stability of the spoil or underground development waste shall be demonstrated through standard geotechnical analysis to be consistent with backfilling and grading requirements for material on the solid bench (1.3 static safety factor) or excess spoil requirements for material not placed on a solid bench (1.5 static safety factor).

(iv) The surface of the spoil or underground development waste shall be vegetated according to § 817.116, and surface runoff shall be controlled in accordance with § 817.43.

(2) If it is determined by the regulatory authority that disturbance of the existing spoil or underground development waste would increase environmental harm or adversely affect the health and safety of the public, the regulatory authority may allow the existing spoil or underground development waste pile to remain in place. The regulatory authority may require stabilization of such spoil or underground development waste in accordance with the requirements of paragraphs (l)(1)(i) through (l)(1)(iv) of this section.

[48 FR 23370, May 24, 1983, as amended at 48 FR 41735, Sept. 16, 1983]

§ 817.106 Backfilling and grading: Previously mined areas.

Remining operations on previously mined areas that contain a preexisting highwall shall comply with the requirements of §§ 817.102 through 817.107 of this chapter, except as provided in this section.

(a) The requirements of § 817.102(a) (1) and (2) requiring that elimination of highwalls shall not apply to remining operations where the volume of all reasonably available spoil is demonstrated in writing to the regulatory authority to be insufficient to completely backfill the reaffected or enlarged highwall. The highwall shall be eliminated to the maximum extent technically practical in accordance with the following criteria:

(1) All spoil generated by the remining operation and any other reasonably available spoil shall be used to backfill the area. Reasonably available spoil in the immediate vicinity of the remining operation shall be included within the permit area.

(2) The backfill shall be graded to a slope which is compatible with the approved postmining land use and which provides adequate drainage and long-term stability.

(3) Any highwall remnant shall be stable and not pose a hazard to the public health and safety or to the environment. The operator shall demonstrate, to the satisfaction of the regulatory authority, that the highwall remnant is stable.

(4) Spoil placed on the outslope during previous mining operations shall not be disturbed if such disturbances will cause instability of the remaining spoil or otherwise increase the hazard to the public health and safety or to the environment.

(b) The requirements of § 817.102(a)(1) and (2) requiring the elimination of highwalls shall not apply to remining operations that will not cause an adverse physical impact on the preexisting highwall. Such remining operations shall comply with the following:

(1) The backfill shall be graded to a slope which is compatible with the approved postmining land use and which provides adequate drainage and long-term stability.

(2) Any highwall remnant shall be stable and not pose a hazard to the public health and safety or to the environment.

[48 FR 41735, Sept. 16, 1983]

EDITORIAL NOTE: For documents suspending § 817.106(b), see 50 FR 258, Jan. 3, 1985 and 50 FR 12539, Mar. 29, 1985.

§ 817.107 Backfilling and grading: Steep slopes.

(a) Underground mining activities on steep slopes shall be conducted so as to meet the requirements of §§ 817.102-817.106 and the requirements of this section.

(b) The following materials shall not be placed on the downslope:

(1) Spoil.

(2) Waste materials of any type.

(3) Debris, including that from clearing and grubbing.

(4) Abandoned or disabled equipment.

(c) Land above the highwall shall not be disturbed unless the regulatory authority finds that this disturbance will facilitate compliance with the environmental protection standards of this subchapter and the disturbance is limited to that necessary to facilitate compliance.

(d) Woody materials shall not be buried in the backfilled area unless the regulatory authority determines that the proposed method for placing woody material within the backfill will not deteriorate the stable condition of the backfilled area.

[48 FR 23370, May 24, 1983, as amended at 48 FR 41735, Sept. 16, 1983]

§ 817.111 Revegetation: General requirements.

(a) The permittee shall establish on regraded areas and on all other disturbed areas except water areas and surface areas of roads that are approved as part of the postmining land use, as vegetative cover that is in accordance with the approved permit and reclamation plan and that is—

(1) Diverse, effective, and permanent;

(2) Comprised of species native to the area, or of introduced species where desirable and necessary to achieve the approved postmining land use and approved by the regulatory authority;

(3) At least equal in extent of cover to the natural vegetation of the area; and

(4) Capable of stabilizing the soil surface from erosion.

(b) The reestablished plant species shall—

(1) Be compatible with the approved postmining land use;

(2) Have the same seasonal characteristics of growth as the original vegetation;

(3) Be capable of self-regeneration and plant succession;

(4) Be compatible with the plant and animal species of the area; and

(5) Meet the requirements of applicable State and Federal seed, poisonous and noxious plant, and introduced species laws or regulations.

(c) The regulatory authority may grant exception to the requirements of paragraphs (b) (2) and (3) of this section when the species are necessary to achieve a quick-growing, temporary, stabilizing cover, and measures to establish permanent vegetation are included in the approved permit and reclamation plan.

(d) When the regulatory authority approves a cropland postmining land use, the regulatory authority may grant exceptions to the requirements of paragraphs (a) (1), (3), (b) (2), and (3) of this section. The requirements of Part 823 of this chapter apply to areas identified as prime farmland.

[48 FR 40161, Sept. 2, 1983]

§ 817.113 Revegetation: Timing.

Disturbed areas shall be planted during the first normal period for favorable planting conditions after replacement of the plant-growth medium. The normal period for favorable planting is that planting time generally accepted locally for the type of plant materials selected.

[48 FR 40161, Sept. 2, 1983]

§ 817.114 Revegetation: Mulching and other soil stabilizing practices.

Suitable mulch and other soil stabilizing practices shall be used on all areas that have been regraded and covered by topsoil or topsoil substitutes. The regulatory authority may waive this requirement if seasonal, soil, or slope factors result in a condition where mulch and other soil stabilizing practices are not necessary to control erosion and to promptly establish an effective vegetative cover.

[48 FR 40161, Sept. 2, 1983]

§ 817.116 Revegetation: Standards for success.

(a) Success of revegetation shall be judged on the effectiveness of the vegetation for the approved postmining land use, the extent of cover compared to the cover occurring in natural vegetation of the area, and the general requirements of § 817.111.

(1) Standards for success and statistically valid sampling techniques for measuring success shall be selected by the regulatory authority and included in an approved regulatory program.

(2) Standards for success shall include criteria representative of unmined lands in the area being reclaimed to evaluate the appropriate vegetation parameters of ground cover, production, or stocking. Ground cover, production, or stocking shall be considered equal to the approved success standard when they are not less than 90 percent of the success standard. The sampling techniques for measuring success shall use a 90-percent statistical confidence interval (i.e., a one-sided test with a 0.10 alpha error).

(b) Standards for success shall be applied in accordance with the approved postmining land use and, at a minimum, the following conditions:

(1) For areas developed for use as grazing land or pasture land, the ground cover and production of living plants on the revegetated area shall be at least equal to that of a reference area or such other success standards approved by the regulatory authority.

(2) For areas developed for use as cropland, crop production on the revegetated area shall be at least equal to that of a reference area or such other success standards approved by the regulatory authority.

(3) For areas to be developed for fish and wildlife habitat, recreation, shelter belts, or forest products, success of vegetation shall be determined on the basis of tree and shrub stocking and vegetative ground cover. Such parameters are described as follows:

(i) Minimum stocking and planting arrangements shall be specified by the regulatory authority on the basis of local and regional conditions and after consultation with the State agencies responsible for the administration of forestry and wildlife programs.

(ii) Trees and shrubs that will be used in determining the success of stocking and the adequacy of plant arrangement shall have utility for the approved postmining land use. At the time of bond release, such trees and shrubs shall be healthy, and at least 80 percent shall have been in place for at least three growing seasons in areas with a 5-year period of responsibility and at least eight growing seasons in areas with a 10-year period of responsibility. No trees and shrubs in place for less than two growing seasons shall be counted in determining stocking adequacy.

(iii) Vegetative ground cover shall not be less than that required to achieve the approved postmining land use.

(4) For areas to be developed for industrial, commercial, or residential use less than 2 years after regrading is completed, the vegetative ground cover shall not be less than that required to control erosion.

(5) For areas previously disturbed by mining that were not reclaimed to the requirements of this subchapter and that are remined or otherwise redisturbed by surface coal mining operations, as a minimum, the vegetative ground cover shall be not less than the ground cover existing before redisturbance and shall be adequate to control erosion.

(c)(1) The period of extended responsibility for successful revegetation shall begin after the last year of augmented seeding, fertilizing, irrigation, or other work, excluding husbandry practices that are approved by the regulatory authority in accordance with paragraph (c)(4) of this section.

(2) In areas of more than 26.0 inches average annual precipitation, the period of responsibility shall continue for a period of not less than 5 full years. Vegetation parameters identified in paragraph (b) of this section shall equal or exceed the approved success standard during the growing season of the last year of the responsibility period or, if required by the regulatory authority, during the growing seasons of the last 2 years of the responsibility period.

(3) In areas of 26.0 inches or less average annual precipitation, the period of responsibility shall continue for a period of not less than 10 full years. Vegetation parameters identified in paragraph (b) of this section shall equal or exceed the approved success standard for at least the last 2 consecutive years of the responsibility period.

(4) The regulatory authority may approve selective husbandry practices, excluding augmented seeding, fertilization, or irrigation, without extending the period of responsibility for revegetation success and bond liability, if such practices can be expected to continue as part of the postmining land use or if discontinuance of the practices after the liability period expires will not reduce the probability of permanent revegetation success. Approved practices shall be normal conservation practices within the region for unmined lands having land uses similar to the approved postmining land use of the disturbed area, including such practices as disease, pest, and vermin control; and any pruning, reseeding and/or transplanting specifically necessitated by such actions.

[48 FR 40161, Sept. 2, 1983]

§ 817.121 Subsidence control.

(a) The operator shall either adopt measures consistent with known technology which prevent subsidence from causing material damage to the extent technologically and economically feasible, maximize mine stability, and maintain the value and reasonably foreseeable use of surface lands; or adopt mining technology which provides for planned subsidence in a predictable and controlled manner. Nothing in this part shall be construed to prohibit the standard method of room-and-pillar mining.

(b) The operator shall comply with all provisions of the approved subsidence control plan prepared pursuant to § 784.20 of this chapter.

(c) The operator shall—

(1) Correct any material damage resulting from subsidence caused to surface lands, to the extent technologically and economically feasible, by restoring the land to a condition capable of

maintaining the value and reasonably foreseeable uses which it was capable of supporting before subsidence; and

(2) To the extent required under State law, either correct material damage resulting from subsidence caused to any structures or facilities by repairing the damage or compensate the owner of such structures or facilities in the full amount of the diminution in value resulting from the subsidence. Repair of damage includes rehabilitation, restoration, or replacement of damaged structures or facilities. Compensation may be accomplished by the purchase prior to mining of a noncancellable premium-prepaid insurance policy.

(d) Underground mining activities shall not be conducted beneath or adjacent to (1) public buildings and facilities; (2) churches, schools, and hospitals; or (3) impoundments with a storage capacity of 20 acre-feet or more or bodies of water with a volume of 20 acre-feet or more, unless the subsidence control plan demonstrates that subsidence will not cause material damage to, or reduce the reasonably foreseeable use of, such features or facilities. If the regulatory authority determines that it is necessary in order to minimize the potential for material damage to the features or facilities described above or to any aquifer or body of water that serves as a significant water source for any public water supply system, it may limit the percentage of coal extracted under or adjacent thereto.

(e) If subsidence causes material damage to any of the features or facilities covered by paragraph (d) of this section, the regulatory authority may suspend mining under or adjacent to such features or facilities until the subsidence control plan is modified to ensure prevention of further material damage to such features or facilities.

(f) The regulatory authority shall suspend underground mining activities under urbanized areas, cities, towns, and communities, and adjacent to industrial or commercial buildings, major impoundments, or perennial streams, if imminent danger is found to inhabitants of the urbanized areas, cities, towns, or communities.

(g) Within a schedule approved by the regulatory authority, the operator shall submit a detailed plan of the underground workings. The detailed plan shall include maps and descriptions, as appropriate, of significant features of the underground mine, including the size, configuration, and approximate location of pillars and entries, extraction ratios, measure taken to prevent or minimize subsidence and related damage, areas of full extraction, and other information required by the regulatory authority. Upon request of the operator, information submitted with the detailed plan may be held as confidential, in accordance with the requirements of § 773.13(d) of this chapter.

[48 FR 24652, June 1, 1983]

EDITORIAL NOTE: In § 817.121(c)(2), the phrase "[t]o the extent required under State law" was suspended except as cross-referenced in § 942.817 of this chapter, at 50 FR 7278, Feb. 21, 1985.

§ 817.122 Subsidence control: Public notice.

At least 6 months prior to mining, or within that period if approved by the regulatory authority, the underground mine operator shall mail a notification to all owners and occupants of surface property and structures above the underground workings. The notification shall include, at a minimum, identification of specific areas in which mining will take place, dates that specific areas will be undermined, and the location or locations where the operator's subsidence control plan may be examined.

[48 FR 24652, June 1, 1983]

§ 817.131 Cessation of operations: Temporary.

(a) Each person who conducts underground mining activities shall effectively support and maintain all surface access openings to underground operations, and secure surface facilities in areas in which there are no current operations, but operations are to be resumed under an approved permit. Temporary abandonment shall not relieve a person of his or her obligation to comply with any provisions of the approved permit.

(b) Before temporary cessation of mining and reclamation operations for a period of thirty days or more, or as soon as it is known that a temporary cessation will extend beyond 30 days, each person who conducts underground mining activities shall submit to the regulatory authority a notice of intention to cease or abandon operations. This notice shall include a statement of the exact number of surface acres and the horizontal and vertical extent of sub-surface strata which have been in the permit area prior to cessation or abandonment, the extent and kind of reclamation of surface area which will have been accomplished, and identification of the backfilling, regrading, revegetation, environmental monitoring, underground opening closures and water treatment activities that will continue during the temporary cessation.

§ 817.132 Cessation of operations: Permanent.

(a) The person who conducts underground mining activities shall close or backfill or otherwise permanently reclaim all affected areas, in accordance with this chapter and according to the permit approved by the regulatory authority.

(b) All surface equipment, structures, or other facilities not required for continued underground mining activities and monitoring, unless approved as suitable for the postmining land use or environmental monitoring, shall be removed and the affected lands reclaimed.

§ 817.133 Postmining land use.

(a) *General.* All disturbed areas shall be restored in a timely manner to conditions that are capable of supporting—

(1) The uses they were capable of supporting before any mining; or

(2) Higher or better uses.

(b) *Determining premining uses of land.* The premining uses of land to which the postmining land use is compared shall be those uses which the land previously supported, if the land has not been previously mined and has been properly managed. The postmining land use for land that has been previously mined and not reclaimed shall be judged on the basis of the land use that existed prior to any mining: *Provided that,* if the land cannot be reclaimed to the land use that existed prior to any mining because of the previously mined condition, the postmining land use shall be judged on the basis of the highest and best use that can be achieved which is compatible with surrounding areas and does not require the disturbance of areas previously unaffected by mining.

(c) *Criteria for alternative postmining land uses.* Higher or better uses may be approved by the regulatory authority as alternative postmining land uses after consultation with the landowner or the land management agency having jurisdiction over the lands, if the proposed uses meet the following criteria:

(1) There is a reasonable likelihood for achievement of the use.

(2) The use does not present any actual or probable hazard to public health and safety, or threat of water diminution or pollution.

(3) The use will not—

(i) Be impractical or unreasonable;

(ii) Be inconsistent with applicable land use policies or plans;

(iii) Involve unreasonable delay in implementation; or

(iv) Cause or contribute to violation of Federal, State, or local law.

(d) *Approximate original contour: Criteria for variance.* Surface coal mining operations that meet the requirements of this paragraph may be conducted under a variance from the requirement to restore disturbed areas to their approximate original contour, if the following requirements are satisfied:

(1) The regulatory authority grants the variance under a permit issued in accordance with § 785.16 of this chapter.

(2) The alternative postmining land use requirements of paragraph (c) of this section are met.

(3) All applicable requirements of the Act and the regulatory program, other than the requirement to restore disturbed areas to their approximate original contour, are met.

(4) After consultation with the appropriate land use planning agencies,

if any, the potential use is shown to constitute an equal or better economic or public use.

(5) The proposed use is designed and certified by a qualified registered professional engineer in conformance with professional standards established to assure the stability, drainage, and configuration necessary for the intended use of the site.

(6) After approval, where required, of the appropriate State environmental agencies, the watershed of the permit and adjacent areas is shown to be improved.

(7) The highwall is completely backfilled with spoil material, in a manner which results in a static factor of safety of at least 1.3, using standard geotechnical analysis.

(8) Only the amount of spoil as is necessary to achieve the postmining land use, ensure the stability of spoil retained on the bench, and meet all other requirements of the Act and this chapter is placed off the mine bench. All spoil not retained on the bench shall be placed in accordance with §§ 817.71 through 817.74 of this chapter.

(9) The surface landowner of the permit area has knowingly requested, in writing, that a variance be granted, so as to render the land, after reclamation, suitable for an industrial, commercial, residential, or public use (including recreational facilities).

(10) Federal, State, and local government agencies with an interest in the proposed land use have an adequate period in which to review and comment on the proposed use.

[48 FR 33905, Sept. 1, 1983]

§ 817.150 Roads: General.

(a) *Road classification system.* (1) Each road shall be classified as either a primary road or an ancillary road.

(2) A primary road is any road which is—

(i) Used for transporting coal or spoil;

(ii) Frequently used for access or other purposes for a period in excess of six months; or

(iii) To be retained for an approved postmining land use.

(3) An ancillary road is any road not classified as a primary road.

(b) *Performance standards.* Roads shall be located, designed, constructed, reconstructed, used, maintained and reclaimed so as to:

(1) Control or prevent erosion, siltation and the air pollution attendant to erosion by vegetating or otherwise stabilizing all exposed surfaces in accordance with current, prudent engineering practices;

(2) Control or prevent damage to fish, wildlife or their habitat and related environmental values;

(3) Control or prevent additional contributions of suspended solids to stream flow or runoff outside the permit area;

(4) Neither cause nor contribute to, directly or indirectly, the violation of State or Federal water quality standards applicable to receiving waters;

(5) Minimize the diminution to or degradation of the quality or quantity of surface- and ground-water systems;

(6) Refrain from significantly altering the normal flow of water in streambeds or drainage channels;

(7) Prevent or control damage to public or private property;

(8) Use nonacid- or nontoxic-forming substances in road surfacing; and

(9) Have, at a minimum, a static factor of safety of 1.3 for all embankments.

(c) *Design and construction limits and establishment of design criteria.* To ensure environmental protection and safety appropriate for their planned duration and use, including consideration of the type and size of equipment used, the design and construction or reconstruction of roads shall incorporate appropriate limits for grade, width, surface materials, surface drainage control, culvert placement, culvert size, and any necessary design criteria established by the regulatory authority.

(d) *Location.* (1) No part of any road shall be located in the channel of an intermittent or perennial stream unless specifically approved by the regulatory authority.

(2) Roads shall be located to minimize downstream sedimentation and flooding.

(e) *Maintenance.* (1) A road shall be maintained throughout its life to meet the performance standards of this part and any additional criteria specified by the regulatory authority.

(2) A road damaged by a catastrophic event, such as a flood or earthquake, shall be repaired as soon as practical after the damage has occurred.

(f) *Reclamation.* A road not to be retained for use under an approved postmining land use shall be reclaimed immediately after it is no longer needed for mining and reclamation operations, including:

(1) Closing the road to traffic;

(2) Removing all bridges and culverts;

(3) Restoring the natural drainage patterns;

(4) Reshaping all cut and fill slopes to be compatible with the postmining land use and to complement the drainage pattern of the surrounding terrain; and

(5) Replacing topsoil and revegetating disturbed surfaces in accordance with §§ 817.22 and 817.111-817.116.

[48 FR 22123, May 16, 1983, as amended at 48 FR 44781, Sept. 30, 1983]

EDITORIAL NOTE: For a document suspending § 817.150, except as cross-referenced in § 942.817 of this chapter, see 50 FR 7278, Feb. 21, 1985.

§ 817.151 Primary roads.

Primary roads shall meet the requirements of § 817.150 and the additional requirements of this section.

(a) *Certification.* The design and construction or reconstruction of primary roads shall be certified by a qualified registered professional engineer as meeting the requirements of this part; current, prudent engineering practices; and any design criteria established by the regulatory authority.

(b) *Location.* (1) To minimize erosion, a primary road is to be located, insofar as practical, on the most stable available surfaces.

(2) Stream fords by primary roads are prohibited unless they are specifically approved by the regulatory authority as temporary routes during periods of construction.

(c) *Drainage control.* (1) Each primary road shall be designed, constructed or reconstructed, and maintained to have adequate drainage control, using structures such as, but not limited to, bridges, ditches, cross drains, and ditch relief drains. The drainage control system shall be designed to pass the peak runoff safely from a 10-year, 6-hour precipitation event, or greater event unless otherwise specified by the regulatory authority.

(2) Drainage pipes and culverts shall be constructed to avoid plugging or collapse and erosion at inlets and outlets.

(3) Drainage ditches shall be designed to prevent uncontrolled drainage over the road surface and embankment. Trash racks and debris basins shall be installed in the drainage ditches where debris from the drainage area may impair the functions of drainage and sediment control structures.

(4) Culverts shall be designed, installed, and maintained to sustain the vertical soil pressure, the passive resistance of the foundation, and the weight of vehicles using the road.

(5) Natural stream channels shall not be altered or relocated without the prior approval of the regulatory authority in accordance with §§ 817.41 through 817.43 and 817.57.

(6) Except as provided at paragraph (b)(2) of this section, drainage structures shall be used for stream channel crossings, made using bridges, culverts, or other structures designed, constructed, and maintained using current, prudent engineering practice.

(d) *Surfacing.* Primary roads shall be surfaced with rock, crushed gravel, asphalt, or other material approved by the regulatory authority as being sufficiently durable for the anticipated volume of traffic and the weight and speed of vehicles using the road.

(e) *Maintenance.* Routine maintenance for primary roads shall include repairs to the road surface, blading, filling potholes and adding replacement gravel or asphalt. It shall also include revegetation, brush removal, and minor reconstruction of road segments as necessary.

[48 FR 22123, May 16, 1983, as amended at 48 FR 44781, Sept. 30, 1983]

EDITORIAL NOTE: For a document suspending § 817.151, except as cross-referenced in

§ 942.817 of this chapter, see 50 FR 7278, Feb. 21, 1985.

§ 817.180 Utility installations.

All underground mining activities shall be conducted in a manner which minimizes damage, destruction, or disruption of services provided by oil, gas, and water wells; oil, gas, and coal-slurry pipelines, railroads; electric and telephone lines; and water and sewage lines which pass over, under, or through the permit area, unless otherwise approved by the owner of those facilities and the regulatory authority.

[48 FR 20401, May 5, 1983]

§ 817.181 Support facilities.

(a) Support facilities shall be operated in accordance with a permit issued for the mine or coal preparation plant to which it is incident or from which its operation results.

(b) In addition to the other provisions of this part, support facilities shall be located, maintained, and used in a manner that—

(1) Prevents or controls erosion and siltation, water pollution, and damage to public or private property; and

(2) To the extent possible using the best technology currently available—

(i) Minimizes damage to fish, wildlife, and related environmental values; and

(ii) Minimizes additional contributions of suspended solids to streamflow or runoff outside the permit area. Any such contributions shall not be in excess of limitations of State or Federal law.

[48 FR 20401, May 5, 1983]

§ 817.200 Interpretative rules related to general performance standards.

The following interpretations of rules promulgated in Part 817 of this chapter have been adopted by the Office of Surface Mining Reclamation and Enforcement.

(a)-(b) [Reserved]

(c) *Interpretation of § 816.22(e)—Topsoil Removal.* (1) Results of physical and chemical analyses of overburden and topsoil to demonstrate that the resulting soil medium is equal to or more suitable for sustaining revegetation than the available topsoil, provided that trials, and tests are certified by an approved laboratory in accordance with 30 CFR 816.22(e)(1)(ii), may be obtained from any one or a combination of the following sources:

(i) U.S. Department of Agriculture Soil Conservation Service published data based on established soil series;

(ii) U.S. Department of Agriculture Soil Conservation Service Technical Guides;

(iii) State agricultural agency, university, Tennessee Valley Authority, Bureau of Land Management or U.S. Department of Agriculture Forest Service published data based on soil series properties and behavior, or

(iv) Results of physical and chemical analyses, field site trials, or greenhouse tests of the topsoil and overburden materials (soil series) from the permit area.

(2) If the operator demonstrates through soil survey or other data that the topsoil and unconsolidated material are insufficient and substitute materials will be used, only the substitute materials must be analyzed in accordance with 30 CFR 816.22(e)(1)(i).

(d) *Interpretation of § 817.133: Postmining land use.* (1) The requirements of 30 CFR 784.15(a)(2), for approval of an alternative postmining land use, may be met by requesting approval through the permit revision procedures of 30 CFR 774.13 rather than requesting such approval through the permit application. The original permit application, however, must demonstrate that the land will be returned to its premining land use capability as required by 30 CFR 817.133(a).

An application for a permit revision of this type, (i) must be submitted in accordance with the filing deadlines of 30 CFR 774.13, (ii) shall constitute a significant alteration from the mining operations contemplated by the original permit, and (iii) shall be subject to the requirements of 30 CFR 773 and 775.

(Secs. 501, 502, 504, 508, 515, 516, Pub. L. 95-87, 91 Stat. 467, 468, 471, 478, 492, 496 (30 U.S.C. 1251, 1252, 1254, 1258, 1265, 1266))

[45 FR 26000, Apr. 16, 1980, as amended at 45 FR 39447, June 10, 1980; 45 FR 64908, Oct. 1, 1980; 45 FR 73946, Nov. 7, 1980; 48 FR 44781, Sept. 30, 1983]

PART 819—SPECIAL PERMANENT PROGRAM PERFORMANCE STANDARDS–AUGER MINING

Sec.
819.1 Scope.
819.11 Auger mining: General.
819.13 Auger mining: Coal recovery.
819.15 Auger mining: Hydrologic balance.
819.17 Auger mining: Subsidence protection.
819.19 Auger mining: Backfilling and grading.
819.21 Auger mining: Protection of underground mining.

AUTHORITY: Pub. L. 95-87, 30 U.S.C. 1201 *et seq.*

SOURCE: 48 FR 19322, Apr. 28, 1983, unless otherwise noted.

§ 819.1 Scope.

This part sets environmental protection performance standards for surface coal mining and reclamation operations involving auger mining.

§ 819.11 Auger mining: General.

(a) Auger mining operations shall be conducted in accordance with the requirements of Part 816 of this chapter, except as provided in this part.

(b) The regulatory authority may prohibit auger mining, if necessary to—

(1) Maximize the utilization, recoverability, or conservation of the solid-fuel resource, or

(2) Protect against adverse water-quality impacts.

§ 819.13 Auger mining: Coal recovery.

(a) Auger mining shall be conducted so as to maximize the utilization and conservation of the coal in accordance with § 816.59 of this chapter.

(b) Auger mining shall be planned and conducted to maximize recoverability of mineral reserves remaining after the operation and reclamation are complete.

(c) Each person who conducts auger mining operations shall leave areas of undisturbed coal, as approved by the regulatory authority, to provide access for future underground mining activities to coal reserves remaining after augering is completed, unless it is established that the coal reserves have been depleted or are so limited in thickness or extent that it will not be practicable to recover the remaining coal. This determination shall be made by the regulatory authority upon presentation of appropriate technical evidence by the operator.

§ 819.15 Auger mining: Hydrologic balance.

(a) Auger mining shall be planned and conducted to minimize disturbances of the prevailing hydrologic balance in accordance with the requirements of §§ 816.41 and 816.42 of this chapter.

(b) All auger holes, except as provided in paragraph (c) of this section, shall be—

(1) Sealed within 72 hours after completion with an impervious and noncombustible material, if the holes are discharging water containing acid-or toxic-forming material. If sealing is not possible within 72 hours, the discharge shall be treated commencing within 72 hours after completion to meet applicable effluent limitations and water-quality standards until the holes are sealed; and

(2) Sealed with an impervious noncombustible material, as contemporaneously as practicable with the augering operation, as approved by the regulatory authority, if the holes are not discharging water containing acid-or toxic-forming material.

(c) Auger holes need not be sealed with an impervious material so as to prevent drainage if the regulatory authority determines that—

(1) The resulting impoundment of water may create a hazard to the environment or public health or safety, and

(2) The drainage from the auger holes will—

(i) Not pose a threat of pollution to surface water, and

(ii) Comply with the requirements of §§ 816.41 and 816.42 of this chapter.

§ 819.17 Auger mining: Subsidence protection.

Auger mining shall be conducted in accordance with the requirements of § 817.121(a) and (c) of this chapter.

§ 819.19 Auger mining: Backfilling and grading.

(a) *General.* Auger mining shall be conducted in accordance with the backfilling and grading requirements of §§ 816.102 and 816.104 through 816.106 of this chapter.

(b) *Remining.* Where auger mining operations affect previously mined areas that were not reclaimed to the standards of this chapter and the volume of all reasonably available spoil is demonstrated in writing to the regulatory authority to be insufficient to completely backfill the highwall, the highwall shall be eliminated to the maximum extent technically practical in accordance with the following criteria:

(1) The person who conducts the auger mining operation shall demonstrate to the regulatory authority that the backfill, designed by a qualified registered professional engineer, has a minimum static safety factor for the stability of the backfill of at least 1.3.

(2) All spoil generated by the auger mining operation and any associated surface coal mining and reclamation operation, and any other reasonably available spoil shall be used to backfill the area. Reasonably available spoil shall include spoil generated by the mining operation and other spoil located in the permit area that is accessible and available for use and that when rehandled will not cause a hazard to the public safety or significant damage to the environment. For this purpose, the permit area shall include spoil in the immediate vicinity of the auger mining operation.

(3) The coal seam mined shall be covered with a minimum of 4 feet of nonacid-, nontoxic-forming material and the backfill graded to a slope which is compatible with the approved postmining land use and which provides adequate drainage and long-term stability.

(4) Any remnant of the highwall shall be stable and not pose a hazard to the public health and safety or to the environment.

(5) Spoil placed on the outslope during previous mining operations shall not be disturbed if such disturbances will cause instability of the remaining spoil or otherwise increase the hazard to the public health and safety or to the environment.

§ 819.21 Auger mining: Protection of underground mining.

Auger holes shall not extend closer than 500 feet (measured horizontally) to any abandoned or active underground mine workings, except as approved in accordance with § 816.79 of this chapter.

PART 820—SPECIAL PERMANENT PROGRAM PERFORMANCE STANDARDS—ANTHRACITE MINES IN PENNSYLVANIA

Sec.
820.1 Scope.
820.2 Objective.
820.11 Performance standards: Anthracite mines in Pennsylvania.

AUTHORITY: Secs. 102, 201, 501, 503, 504, 529, Pub. L. 95-97, 91 Stat. 448, 449, 467, 470, 471, 514 (30 U.S.C. 1202, 1211, 1251, 1253, 1254, 1279).

§ 820.1 Scope.

This part sets forth environmental protection performance standards for anthracite surface coal mining and reclamation operations in Pennsylvania.

[44 FR 15449, Mar. 13, 1979]

§ 820.2 Objective.

This part implements subsection 529(a) of the Act, which requires the Secretary to adopt special performance standards for anthracite mines regulated by special environmental protection performance standards of a State as of the date of enactment of the Act.

[44 FR 15449, Mar. 13, 1979]

§ 820.11 Performance standards: Anthracite mines in Pennsylvania.

Anthracite mines in Pennsylvania, as specified in Section 529 of the Act, shall comply with its approved State program, including Commonwealth of Pennsylvania statutes and regulations, and revisions thereto that are approved by OSM pursuant to Part 732 of this chapter.

[47 FR 44943, Oct. 12, 1982]

PART 822—SPECIAL PERMANENT PROGRAM PERFORMANCE STANDARDS—OPERATIONS IN ALLUVIAL VALLEY FLOORS

Sec.
822.1 Scope.
822.10 Information collection.
822.11 Essential hydrologic functions.
822.12 Protection of agricultural activities.
822.13 Monitoring.

AUTHORITY: Pub. L. 95-87, 30 U.S.C. 1201 *et seq.*

SOURCE: 48 FR 29822, June 28, 1983, unless otherwise noted.

§ 822.1 Scope.

This part sets forth additional requirements for surface coal mining and reclamation operations on or which affect alluvial valley floors in the arid and semiarid regions of the country.

§ 822.10 Information collection.

The information collection requirements contained in § 822.13 have been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned clearance number 1029-0049. The information is being collected to meet the requirements of sections 510(b)(5) and 515(b)(10)(F) of the Act which provide the information collection requirements and performance standards for alluvial valley floors. This information will be used to enable the regulatory authority to assess the impact of the proposed operation during the permanent regulatory program. The obligation to respond is mandatory.

§ 822.11 Essential hydrologic functions.

(a) The operator of a surface coal mining and reclamation operation shall minimize disturbances to the hydrologic balance by preserving throughout the mining and reclamation process the essential hydrologic functions of an alluvial valley floor not within the permit area.

(b) The operator of a surface coal mining and reclamation operation shall minimize disturbances to the hydrologic balance within the permit area by reestablishing throughout the mining and reclamation process the essential hydrologic functions of alluvial valley floors.

§ 822.12 Protection of agricultural activities.

(a) *Prohibitions.* Surface coal mining and reclamation operations shall not: (1) Interrupt, discontinue, or preclude farming on alluvial valley floors; or (2) cause material damage to the quantity or quality of water in surface or underground water systems that supply alluvial valley floors.

(b) *Statutory exclusions.* The prohibitions of paragraph (a) of this section shall not apply—

(1) Where the premining land use of an alluvial valley floor is undeveloped rangeland which is not significant to farming;

(2) Where farming on the alluvial valley floor that would be affected by the surface coal mining operation is of such small acreage as to be of negligible impact on the farm's agricultural production;

(3) To any surface coal mining and reclamation operation that, in the year preceding August 3, 1977—

(i) Produced coal in commercial quantities and was located within or adjacent to an alluvial valley floor; or

(ii) Obtained specific permit approval by the State regulatory authority to conduct surface coal mining and reclamation operations within an alluvial valley floor; or

(4) To any land that is the subject of an application for renewal or revision of a permit issued pursuant to the Act which is an extension of the original permit, insofar as: (i) The land was previously identified in a reclamation plan submitted under either Part 780 or 784 of this chapter, and (ii) the original permit area was excluded from the protection of paragraph (a) of this section for a reason set forth in paragraph (b)(3) of this section.

§ 822.13 Monitoring.

(a) A monitoring system shall be installed, maintained, and operated by the permittee on all alluvial valley floors during surface coal mining and reclamation operations and continued until all bonds are released in accordance with Subchapter J of this chapter. The monitoring system shall provide sufficient information to allow the regulatory authority to determine that—

(1) The essential hydrologic functions of alluvial valley floors are being preserved outside the permit area or reestablished within the permit area throughout the mining and reclamation process in accordance with § 822.11;

(2) Farming on lands protected under § 822.12 is not being interrupted, discontinued, or precluded; and

(3) The operation is not causing material damage to the quantity or quality of water in the surface or underground systems that supply alluvial valley floors protected under § 822.12.

(b) Monitoring shall be conducted at adequate frequencies to indicate long-term trends that could affect compliance with §§ 822.11 and 822.12.

(c) All monitoring data collected and analyses thereof shall routinely be made available to the regulatory authority.

PART 823—SPECIAL PERMANENT PROGRAM PERFORMANCE STANDARDS—OPERATIONS ON PRIME FARMLAND

Sec.
823.1 Scope and purpose.
823.4 Responsibilities.
823.11 Applicability.
823.12 Soil removal and stockpiling.
823.14 Soil replacement.
823.15 Revegetation and restoration of soil productivity.

Authority: Pub. L. 95-87, 30 U.S.C. 1201 *et seq.*

Source: 48 FR 21463, May 12, 1983, unless otherwise noted.

§ 823.1 Scope and purpose.

This part sets forth special environmental protection performance, reclamation, and design standards for surface coal mining and reclamation operations on prime farmland.

§ 823.4 Responsibilities.

(a) The U.S. Soil Conservation Service within each State shall establish specifications for prime farmland soil removal, storage, replacement, and reconstruction.

(b) The regulatory authority within each State shall use the soil-reconstruction specifications of paragraph (a) of this section to carry out its responsibilities under § 785.17 and Subchapter J of this chapter.

§ 823.11 Applicability.

The requirements of this part shall not apply to—

(a) Coal preparation plants, support facilities, and roads of surface and underground mines that are actively used over extended periods of time and where such uses affect a minimal amount of land. Such uses shall meet the requirements of Part 816 of this chapter for surface mining activities and of Part 817 of this chapter for underground mining activities;

(b) Water bodies that have been approved by the regulatory authority as an alternative postmining land use in accordance with §§ 773.15, 780.23, 784.15, 816.133, and 817.133 of this chapter, as applicable, and where the regulatory authority has determined that the water bodies will be designed and constructed to minimize the loss of prime farmland. Such water bodies shall meet the requirements of §§ 816.49 and 817.49 of this chapter; or

(c) Prime farmland that has been excluded in accordance with § 785.17(a) of this chapter.

Editorial Note: For a document suspending § 823.11(a) "insofar as it excludes from the requirements of Part 823 those coal preparation plants, support facilities, and roads that are surface mining activities", and paragraph (b) in its entirety, see 50 FR 7278, Feb. 21, 1985.

§ 823.12 Soil removal and stockpiling.

(a) Prime farmland soils shall be removed from the areas to be disturbed before drilling, blasting, or mining.

(b) The minimum depth of soil and soil materials to be removed and stored for use in the reconstruction of prime farmland shall be sufficient to meet the requirements of § 823.14(b).

(c) Soil removal and stockpiling operations on prime farmland shall be conducted to—

(1) Separately remove the topsoil, or remove other suitable soil materials where such other soil materials will create a final soil having a greater pro-

ductive capacity than that which exist prior to mining. If not utilized immediately, this material shall be placed in stockpiles separate from the spoil and all other excavated materials; and

(2) Separately remove the B or C horizon or other suitable soil material to provide the thickness of suitable soil required by § 823.14(b). If not utilized immediately, each horizon or other material shall be stockpiled separately from the spoil and all other excavated materials. Where combinations of such soil materials created by mixing have been shown to be equally or more favorable for plant growth than the B horizon, separate handling is not necessary.

(d) Stockpiles shall be placed within the permit area where they will not be disturbed or be subject to excessive erosion. If left in place for more than 30 days, stockpiles shall meet the requirements of § 816.22 or § 817.22 of this chapter.

§ 823.14 Soil replacement.

(a) Soil reconstruction specifications established by the U.S. Soil Conservation Service shall be based upon the standards of the National Cooperative Soil Survey and shall include, as a minimum, physical and chemical characteristics of reconstructed soils and soil descriptions containing soil-horizon depths, soil densities, soil pH, and other specifications such that reconstructed soils will have the capability of achieving levels of yield equal to, or higher than, those of nomined prime farmland in the surrounding area.

(b) The minimum depth of soil and substitute soil material to be reconstructed shall be 48 inches, or a lesser depth equal to the depth to a subsurface horizon in the natural soil that inhibits or prevents root penetration, or a greater depth if determined necessary to restore the original soil productive capacity. Soil horizons shall be considered as inhibiting or preventing root penetration if their physical or chemical properties or water-supplying capacities cause them to restrict or prevent penetration by roots of plants common to the vicinity of the permit area and if these properties or capacities have little or no beneficial effect on soil productive capacity.

(c) The operator shall replace and regrade the soil horizons or other root-zone material with proper compaction and uniform depth.

(d) The operator shall replace the B horizon, C horizon, or other suitable material specified in § 823.12(c)(2) to the thickness needed to meet the requirements of paragraph (b) of this section.

(e) The operator shall replace the topsoil or other suitable soil materials specified in § 823.12(c)(1) as the final surface soil layer. This surface soil layer shall equal or exceed the thickness of the original surface soil layer, as determined by the soil survey.

§ 823.15 Revegetation and restoration of soil productivity.

(a) Following prime farmland soil replacement, the soil surface shall be stabilized with a vegetative cover or other means that effectively controls soil loss by wind and water erosion.

(b) Prime farmland soil productivity shall be restored in accordance with the following provisions:

(1) Measurement of soil productivity shall be initiated within 10 years after completion of soil replacement.

(2) Soil productivity shall be measured on a representative sample or on all of the mined and reclaimed prime farmland area using the reference crop determined under paragraph (b)(6) of this section. A statistically valid sampling technique at a 90-percent or greater statistical confidence level shall be used as approved by the regulatory authority in consultation with the U.S. Soil Conservation Service.

(3) The measurement period for determining average annual crop production (yield) shall be a minimum of 3 crop years prior to release of the operator's performance bond.

(4) The level of management applied during the measurement period shall be the same as the level of management used on nonmined prime farmland in the surrounding area.

(5) Restoration of soil productivity shall be considered achieved when the average yield during the measurement period equals or exceeds the average yield of the reference crop established

for the same period for nonmined soils of the same or similar texture or slope phase of the soil series in the surrounding area under equivalent management practices.

(6) The reference crop on which restoration of soil productivity is proven shall be selected from the crops most commonly produced on the surrounding prime farmland. Where row crops are the dominant crops grown on prime farmland in the area, the row crop requiring the greatest rooting depth shall be chosen as one of the reference crops.

(7) Reference crop yields for a given crop season are to be determined from—

(i) The current yield records of representative local farms in the surrounding area, with concurrence by the U.S. Soil Conservation Service; or

(ii) The average county yields recognized by the U.S. Department of Agriculture, which have been adjusted by the U.S. Soil Conservation Service for local yield variation within the county that is associated with differences between nonmined prime farmland soil and all other soils that produce the reference crop.

(8) Under either procedure in paragraph (b)(7) of this section, the average reference crop yield may be adjusted, with the concurrence of the U.S. Soil Conservation Service, for—

(i) Disease, pest, and weather-induced seasonal variations; or

(ii) Differences in specific management practices where the overall management practices of the crops being compared are equivalent.

PART 824—SPECIAL PERMANENT PROGRAM PERFORMANCE STANDARDS—MOUNTAINTOP REMOVAL

Sec.
824.1 Scope.
824.2 Objectives.
824.11 Mountaintop removal: Performance standards.

AUTHORITY: Secs. 102, 201, 501, 503, 504, 506, 508, 510, 515, 517, 701 Pub. L. 95-87, 91 Stat. 448, 449, 467, 470, 471, 474, 478, 480, 486, 498, 516 (30 U.S.C. 1202, 1211, 1251, 1253, 1254, 1256, 1258, 1260, 1265, 1267, 1291).

§ 824.1 Scope.

This part sets forth special environmental protection performance, reclamation, and design standards for surface coal mining activities constituting mountaintop removal mining.

[44 FR 15452, Mar. 13, 1979]

§ 824.2 Objectives.

The objectives of this part are to—

(a) Enhance coal recovery;

(b) Reclaim the land to equal or higher postmining use; and

(c) Protect and enhance environmental and other values protected under the Act and this chapter.

[44 FR 15452, Mar. 13, 1979]

§ 824.11 Mountaintop removal: Performance standards.

(a) Under an approved regulatory program, surface coal mining activities may be conducted under a variance from the requirement of this subchapter for restoring affected areas to their approximate original contour, if—

(1) The regulatory authority grants the variance under a permit, in accordance with 30 CFR 785.14;

(2) The activities involve the mining of an entire coal seam running through the upper fraction of a mountain, ridge, or hill, by removing all of the overburden and creating a level plateau or gently rolling contour with no highwalls remaining;

(3) An industrial, commercial, agricultural, residential, or public facility (including recreational facilities) use is proposed and approved for the affected land;

(4) The alternative land use requirements of § 816.133(a) through (c) of this chapter are met;

(5) All applicable requirements of this subchapter and the regulatory program, other than the requirement to restore affected areas to their approximate original contour, are met;

(6) An outcrop barrier of sufficient width, consisting of the toe of the lowest coal seam, and its associated overburden, are retained to prevent slides and erosion, except that the regulatory authority may permit an exemption to the retention of the coal

barrier requirement if the following conditions are satisfied:

(i) The proposed mine site was mined prior to May 3, 1978, and the toe of the lowest seam has been removed; or

(ii) A coal barrier adjacent to a head-of-hollow fill may be removed after the elevation of a head-of-hollow fill attains the elevation of the coal barrier if the head-of-hollow fill provides the stability otherwise ensured by the retention of a coal barrier;

(7) The final graded slopes on the mined area are less than $1v{:}5h$, so as to create a level plateau or gently rolling configuration, and the outslopes of the plateau do not exceed $1v{:}2h$ except where engineering data substantiates, and the regulatory authority finds, in writing, and includes in the permit under 30 CFR 785.14, that a minimum static safety factor of 1.5 will be attained;

(8) The resulting level or gently rolling contour is graded to drain inward from the outslope, except at specified points where it drains over the outslope in stable and protected channels. The drainage shall not be through or over a valley or head-of-hollow fill.

(9) Natural watercourses below the lowest coal seam mined are not damaged;

(10) All waste and acid-forming or toxic-forming materials, including the strata immediately below the coal seam, are covered with non-toxic spoil to prevent pollution and achieve the approved postmining land use; and

(11) Spoil is placed on the mountaintop bench as necessary to achieve the postmining land use approved under paragraphs (a)(3) and (a)(4) of this section. All excess spoil material not retained on the mountaintop shall be placed in accordance with 30 CFR 816.41 and 816.43 and 816.71 through 816.74.

[44 FR 15452, Mar. 13, 1979; 44 FR 49687, Aug. 24, 1979, as amended at 48 FR 39905, Sept. 1, 1983; 48 FR 44781, Sept. 30, 1983]

PART 825—SPECIAL PERMANENT PROGRAM PERFORMANCE STANDARDS—SPECIAL BITUMINOUS COAL MINES IN WYOMING

Sec.
825.1 Scope.
825.2 Special bituminous coal mines in Wyoming.

§ 825.1 Scope.

This part establishes requirements for certain bituminous surface coal mining activities located west of the 100th meridian west longitude in Wyoming which existed on January 1, 1972, and for surface coal mining activities immediately adjacent thereto which began development after August 3, 1977, in accordance with section 527 of the Act.

(30 U.S.C. 1201 et seq.)

[47 FR 33432, Aug. 2, 1982]

§ 825.2 Special bituminous coal mines in Wyoming.

Special bituminous coal mines in Wyoming, as specified in section 527 of the Act, shall comply with the approved State program, including Wyoming statutes and regulations, and revisions thereto.

(30 U.S.C. 1201 et seq.)

[47 FR 33432, Aug. 2, 1982]

PART 827—PERMANENT PROGRAM PERFORMANCE STANDARDS—COAL PREPARATION PLANTS NOT LOCATED WITHIN THE PERMIT AREA OF A MINE

Sec.
827.1 Scope.
827.11 General requirements.
827.12 Coal preparation plants: Performance standards.
827.13 Coal preparation plants: Interim performance standards.

AUTHORITY: Pub. L. 95-87, 30 U.S.C. 1201 *et seq.*

SOURCE: 48 FR 20401, May 5, 1983, unless otherwise noted.

§ 827.1 Scope.

This part sets forth requirements for coal preparation plants not within the permit area for a specific mine other than those plants which are located at the site of ultimate coal use.

§ 827.11 General requirements.

Each person who operates a coal preparation plant subject to this part shall obtain a permit in accordance with § 785.21 of this chapter, obtain a bond in accordance with Subchapter J of this chapter, and operate that plant in accordance with the requirements of this part.

§ 827.12 Coal preparation plants: Performance standards.

Except as provided in § 827.13 of this part, the construction, operation, maintenance, modification, reclamation, and removal activities at coal preparation plants shall comply with the following:

(a) Signs and markers for the coal preparation plant, coal processing waste disposal area, and water-treatment facilities shall comply with § 816.11 of this chapter.

(b) Any stream channel diversion shall comply with § 816.43 of this chapter.

(c) Drainage from any disturbed area related to the coal preparation plant shall comply with §§ 816.45 through 816.47 of this chapter, and all discharges from these areas shall meet the requirements of §§ 816.41 and 816.42 of this chapter and any other applicable State or Federal law.

(d) Permanent impoundments associated with coal preparation plants shall meet the requirements of §§ 816.49 and 816.56 of this chapter. Dams constructed of, or impounding, coal processing waste shall comply with § 816.84 of this chapter.

(e) Disposal of coal processing waste, noncoal mine waste, and excess spoil shall comply with §§ 816.81, 816.83, 816.84, 816.87, 816.89, and 816.71 through 816.74 of this chapter, respectively.

(f) Fish, wildlife, and related environmental values shall be protection in accordance with § 816.97 of this chapter.

(g) Support facilities related to the coal preparation plant shall comply with § 816.181 of this chapter.

(h) Roads shall comply with §§ 816.150 and 816.151 of this chapter.

(i) Cessation of operations shall be in accordance with §§ 816.131 and 816.132 of this chapter.

(j) Erosion and air pollution attendant to erosion shall be controlled in accordance with § 816.95 of this chapter.

(k) Adverse effects upon, or resulting from, nearby underground coal mining activities shall be minimized by appropriate measures including, but not limited to, compliance with § 816.79 of this chapter.

(l) Reclamation shall follow proper topsoil handling, backfilling and grading, revegetation, and postmining land use procedures in accordance with §§ 816.22, 816.100, 816.102, 816.104, 816.106, 816.111, 816.113, 816.114, 816.116, and 816.133 of this chapter, respectively.

[48 FR 20401, May 5, 1983, as amended at 50 FR 28189, July 10, 1985]

§ 827.13 Coal preparation plants: Interim performance standards.

(a) Persons operating coal preparation plants not subject to this chapter before July 6, 1984, shall comply with the applicable interim or permanent program performance standards of the State in which such plants are located, as follows:

(1) If located in a State in which either interim or permanent program performance standards apply to such plants, the program standards of the State program shall apply;

(2) If located in a State with a State program which must be amended in order to regulate such plants, the interim program performance standards in Subchapter B of this chapter shall apply; and

(3) If located in a State with a Federal program, all such plants shall be subject to the interim program performance standards in Subchapter B of this chapter.

(b) After a person described in paragraph (a) of this section obtains a permit to operate a coal preparation plant, the performance standards specified in § 827.12 shall be applicable to the operation of that plant instead of those specified in paragraph (a) of this section.

[50 FR 28189, July 10, 1985]

PART 828—SPECIAL PERMANENT PROGRAM PERFORMANCE STANDARDS—IN SITU PROCESSING

Sec.
828.1 Scope.
828.2 Objectives.
828.11 In situ processing: Performance standards.
828.12 In situ processing: Monitoring.

AUTHORITY: Secs. 102, 201, 501, 503, 504, 510, 515, 516, 517, 701; Pub. L. 95-87, 91 Stat. 448, 449, 467, 470, 471, 480, 486, 498, 516 (30 U.S.C. 1202, 1211, 1251, 1253, 1254, 1260, 1265, 1266, 1267, 1291).

§ 828.1 Scope.

This part sets forth special environmental protection performance, reclamation and design standards for in situ processing activities.

[44 FR 15455, Mar. 13, 1979]

§ 828.2 Objectives.

This part is intended to ensure that all in situ processing activities are conducted in a manner which preserves and enhances environmental values in accordance with the Act. This part provides additional performance, reclamation and design standards to reflect the nature of in situ processing.

[44 FR 15455, Mar. 13, 1979]

§ 828.11 In situ processing: Performance standards.

(a) The person who conducts in situ processing activities shall comply with 30 CFR 817 and this section.

(b) In situ processing activities shall be planned and conducted to minimize disturbance to the prevailing hydrologic balance by:

(1) Avoiding discharge of fluids into holes or wells, other than as approved by the regulatory authority;

(2) Injecting process recovery fluids only into geologic zones or intervals approved as production zones by the regulatory authority;

(3) Avoiding annular injection between the wall of the drill hole and the casing; and

(4) Preventing discharge of process fluid into surface waters.

(c) Each person who conducts in situ processing activities shall submit for approval as part of the application for permit under 30 CFR 785.22, and follow after approval, a plan that ensures that all acid-forming, toxic-forming, or radioactive gases, solids, or liquids constituting a fire, health, safety, or environmental hazard and caused by the mining and recovery process are promptly treated, confined, or disposed of, in a manner that prevents contamination of ground and surface waters, damage to fish, wildlife and related environmental values, and threats to the public health and safety.

(d) Each person who conducts in situ processing activities shall prevent flow of the process recovery fluid:

(1) Horizontally beyond the affected area identified in the permit; and

(2) Vertically into overlying or underlying aquifers.

(e) Each person who conducts in situ processing activities shall restore the quality of affected ground water in the permit area and adjacent area, including ground water above and below the production zone, to the approximate premining levels or better, to ensure that the potential for use of the ground water is not diminished.

(Pub. L. 95-87, 30 U.S.C. 1201 *et seq.*)

[44 FR 15455, Mar. 13, 1979, as amended at 48 FR 14822, Apr. 5, 1983]

§ 828.12 In situ processing: Monitoring.

(a) Each person who conducts in situ processing activities shall monitor the quality and quantity of surface and ground water and the subsurface flow and storage characteristics, in a manner approved by the regulatory authority under 30 CFR 817.41, to measure changes in the quantity and quality of water in surface and ground water systems in the permit area and in adjacent areas.

(b) Air and water quality monitoring shall be conducted in accordance with monitoring programs approved by the regulatory authority as necessary according to appropriate Federal and State air and water quality standards.

(Pub. L. 95-87, 30 U.S.C. 1201 *et seq.*)

[44 FR 15455, Mar. 13, 1979, as amended at 48 FR 14822, Apr. 5, 1983; 48 FR 44781, Sept. 30, 1983]

SUBCHAPTER L—PERMANENT PROGRAM INSPECTION AND ENFORCEMENT PROCEDURES

PART 840—STATE REGULATORY AUTHORITY: INSPECTION AND ENFORCEMENT

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840.1 Scope.
840.10 Information collection.
840.11 Inspections by State regulatory authority.
840.12 Right of entry.
840.13 Enforcement authority.
840.14 Availability of records.
840.15 Public participation.
840.16 Compliance conference.

AUTHORITY: Secs. 102, 201, 501(b), 503, 512, 517, 518, and 521 of Pub. L. 95-87, 91 Stat. 448, 449, 468, 470, 483, 498, 499 and 504 (30 U.S.C. 1202, 1211, 1251, 1253, 1262, 1267, 1268 and 1271).

SOURCE: 47 FR 35633, Aug. 16, 1982, unless otherwise noted.

§ 840.1 Scope.

This part sets forth the minimum requirements for the Secretary's approval of the provisions for inspection and enforcement by a State of surface coal mining and reclamation operations and of coal exploration operations which substantially disturb the natural land surface, where a State is the regulatory authority under an approved State program.

§ 840.10 Information collection.

The information collection requirements contained in 30 CFR 840.11(e), 840.14(a) and 840.14(b) have been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned clearance number 1029-0051. The information is being collected by States for use in assessing penalties as evidence in enforcement cases and as an inspection management record. The obligation to respond is mandatory.

§ 840.11 Inspections by State regulatory authority.

(a) The State regulatory authority shall conduct an average of at least one partial inspection per month of each active surface coal mining and reclamation operation under its jurisdiction, and shall conduct such partial inspections of each inactive surface coal mining and reclamation operation under its jurisdiction as are necessary to ensure effective enforcement of the approved State program. A partial inspection is an on-site or aerial review of a person's compliance with some of the permit conditions and requirements imposed under an approved State program.

(b) The State regulatory authority shall conduct an average of at least one complete inspection per calendar quarter of each active or inactive surface coal mining and reclamation operation under its jurisdiction. A complete inspection is an on-site review of a person's compliance with all permit conditions and requirements imposed under the State program, within the entire area disturbed or affected by the surface coal mining and reclamation operations.

(c) The State regulatory authority shall conduct such inspections of coal explorations as are necessary to ensure compliance with the approved State program.

(d)(1) Aerial inspections shall be conducted in a manner which reasonably ensures the identification and documentation of conditions at each surface coal mining and reclamation site inspected.

(2) Any potential violation observed during an aerial inspection shall be investigated on site within three days: provided, that any indication of a condition, practice or violation constituting cause for the issuance of a cessation order under section 521(a)(2) of the Act shall be investigated on site immediately, *And provided further*, That an on-site investigation of a potential violation observed during an aerial inspection shall not be considered to be an additional partial or complete inspection for the purposes of paragraphs (a) and (b) of this section.

(e) The inspections required under paragraphs (a), (b), (c) and (d) of this section shall:

(1) Be carried out on an irregular basis, so as to monitor compliance at

all operations, including those which operate nights, weekends, or holidays;

(2) Occur without prior notice to the permittee or any agent or employee of such permittee, except for necessary on-site meetings; and

(3) Include the prompt filing of inspection reports adequate to enforce the requirements of the approved State program.

(f) For the purposes of this section, an inactive surface coal mining and reclamation operation is one for which:

(1) The State regulatory authority has secured from the permittee the written notice provided for under § 816.131(b) or § 817.131(b) of this chapter; or

(2) Reclamation Phase II as defined at § 800.40 of this chapter has been completed and the liability of the permittee has been reduced by the State regulatory authority in accordance with the State program.

(Pub. L. 95-87, 30 U.S.C. 1201 *et seq.*)

[47 FR 35633, Aug. 16, 1983, as amended at 48 FR 44781, Sept. 30, 1983]

§ 840.12 Right of entry.

(a) Within its jurisdiction, the State regulatory authority shall have authority that grants its representatives a right of entry to, upon, and through any coal exploration or surface coal mining and reclamation operation without advance notice upon presentation of appropriate credentials. No search warrant shall be required, except that a State may provide for its use with respect to entry into a building.

(b) The State regulatory authority shall have authority that authorizes its representatives to inspect any monitoring equipment or method of exploration or operation and to have access to and copy any records required under the approved State program. This authority shall provide that the representatives may exercise such rights at reasonable times, without advance notice, upon presentation of appropriate credentials. No search warrant shall be required, except that a State may provide for its use with respect to entry into a building.

§ 840.13 Enforcement authority.

(a) The civil and criminal penalty provisions of each State program shall contain penalties which are no less stringent than those set forth in section 518 of the Act and shall be consistent with 30 CFR Part 845.

(b) The enforcement provisions of each State program shall contain sanctions which are no less stringent than those set forth in section 521 of the Act and shall be consistent with §§ 843.11, 843.12, and 843.13, and Subchapters G and J of this chapter.

(c) The procedural requirements of each State program relating to the penalties and sanctions mentioned in paragraphs (a) and (b) of this section shall be the same as or similar to those provided in sections 518 and 521 of the Act, respectively, and consistent with Parts 843 and 845 and Subchapters G and J of this chapter.

(d) Nothing in the Act or this part shall be construed as eliminating any additional enforcement rights or procedures which are available under State law to a State regulatory authority, but which are not specifically enumerated in sections 518 and 521 of the Act.

§ 840.14 Availability of records.

(a) Each State regulatory authority shall make available to the Director, upon request, copies of all documents relating to applications for and approvals of existing, new, or revised coal exploration approvals or surface coal mining and reclamation operations permits and all documents relating to inspection and enforcment actions.

(b) Copies of all records, reports, inspection materials, or information obtained by the regulatory authority shall be made immediately available to the public in the area of mining until at least five years after expiration of the period during which the subject operation is active or is covered by any portion of a reclamation bond so that they are conveniently available to residents of that area, except—

(1) As otherwise provided by Federal law; and

(2) For information not required to be made available under §§ 772.15 and

773.13(d) of this chapter or paragraph (d) of this section.

(c) The State regulatory authority shall ensure compliance with paragraph (b) by either:

(1) Making copies of all records, reports, inspection materials, and other subject information available for public inspection at a Federal, State or local government office in the county where the mining is occurring or proposed to occur; or,

(2) At the regulatory authority's option and expense, providing copies of subject information promptly by mail at the request of any resident of the area where the mining is occuring or is proposed to occur, *Provided*, That the regulatory authority shall maintain for public inspection, at a Federal, State or local government office in the county where the mining is occurring or proposed to occur, a description of the information available for mailing and the procedure for obtaining such information.

(d) In order to protect preparation for hearings and enforcement proceedings, the Director and the State regulatory authority may enter into agreements regarding procedures for the special handling of investigative and enforcement reports and other such materials.

(Pub. L. 95-87, 30 U.S.C. 1201 *et seq.*)

[47 FR 35633, Aug. 16, 1982, as amended at 48 FR 44781, Sept. 30, 1983]

§ 840.15 Public participation.

Each State program shall provide for public participation in enforcement of the State program consistent with that provided by 30 CFR Parts 842, 843 and 845 and 43 CFR Part 4.

§ 840.16 Compliance conference.

(a) The State program may provide for compliance conferences between a permittee and an authorized representative of the regulatory authority as described in paragraphs (b) through (e) of this section.

(b) A permittee may request an onsite compliance conference with an authorized representative of the regulatory authority to review the compliance status of any condition or practice proposed at any coal exploration or surface coal mining and reclamation operation. Any such conference shall not constitute an inspection within the meaning of section 517 of the Act and § 840.11.

(c) The State regulatory authority may accept or refuse any request to conduct a compliance conference under paragraph (b).

(d) The authorized representative at any compliance conference shall review such proposed conditions and practices in order to advise whether any such condition or practice may become a violation of any requirement of the Act, the approved State program, or any applicable permit or exploration approval.

(e) Neither the holding of a compliance conference under this section nor any opinion given by the authorized representative at such a conference shall affect:

(1) Any rights or obligations of the regulatory authority or of the permittee with respect to any inspection, notice of violation or cessation order, whether prior or subsequent to such compliance conference; or

(2) The validity of any notice of violation or cessation order issued with respect to any condition or practice reviewed at the compliance conference.

PART 842—FEDERAL INSPECTIONS AND MONITORING

Sec.

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842.11 Federal inspections and monitoring.
842.12 Requests for Federal inspections.
842.13 Right of entry.
842.14 Review of adequacy and completeness of inspections.
842.15 Review of decision not to inspect or enforce.
842.16 Availability of records.

AUTHORITY: Secs. 102, 201, 501(b), 504, 507, 512, 517, 518, 521, and 523 of Pub. L. 95-87, 91 Stat. 448, 449, 468, 471, 474, 483, 498, 499, 504, 510 (30 U.S.C. 1202, 1211, 1251, 1254, 1257, 1262, 1267, 1268, 1271, 1273).

SOURCE: 47 FR 35635, Aug. 16, 1982, unless otherwise noted.

§ 842.1 Scope.

This part sets forth general procedures governing Federal inspections under the permanent regulatory program.

§ 842.11 Federal inspections and monitoring.

(a) Authorized representatives of the Secretary shall conduct inspections of surface coal mining and reclamation operations as necessary—

(1) To monitor and evaluate the administration of approved State programs. Such monitoring and evaluation inspections shall be conducted jointly with the State regulatory authority where practical and where the State so requests;

(2) To develop or enforce Federal programs and Federal lands programs;

(3) To enforce those requirements and permit conditions imposed under a State program not being enforced by a State, under section 504(b) or section 521(b) of the Act, Part 733 of this chapter, or as provided in this section; and

(4) To determine whether any notice of violation or cessation order issued during an inspection authorized under this section has been complied with.

(b)(1) An authorized representative of the Secretary shall immediately conduct a Federal inspection:

(i) When the authorized representative has reason to believe on the basis of information available to him or her (other than information resulting from a previous Federal inspection) that there exists a violation of the Act, this chapter, the applicable program, or any condition of a permit or an exploration approval, or that there exists any condition, practice, or violation which creates an imminent danger to the health or safety of the public or is causing or could reasonably be expected to cause a significant, imminent environmental harm to land, air or water resources and—

(ii)(A) There is no State regulatory authority or the Office is enforcing the State program under section 504(b) or 521(b) of the Act and Part 733 of this chapter; or

(B) The authorized representative has notified the State regulatory authority of the possible violation and within 10 days after notification the State regulatory authority has failed to take appropriate action to have the violation abated and to inform the authorized representative that it has taken such action or has a valid reason for its inaction; or

(C) The person supplying the information supplies adequate proof that an imminent danger to the public health and safety or a significant, imminent environmental harm to land, air or water resources exists and that the State regulatory authority has failed to take appropriate action.

(2) An authorized representative shall have reason to believe that a violation, condition or practice exists if the facts alleged by the informant would, if true, constitute a condition, practice or violation referred to in paragraph (b)(1)(i) of this section.

(c) The Office, when acting as the regulatory authority under a Federal program or a Federal lands program and when enforcing a State program, in whole or in part, pursuant to section 504(b) of section 521(b) of the Act and Part 733 of this chapter, shall conduct inspections of all coal exploration and surface coal mining and reclamation operations under its jurisdiction. The Office shall—

(1) With respect to active surface coal mining and reclamation operations:

(i) Conduct an average of at least one partial inspection per month of each active surface coal mining and reclamation operation. A partial inspection is an on-site or aerial review of a person's compliance with some of the permit requirements and conditions imposed under an applicable program.

(A) Aerial inspections shall be conducted in a manner which reasonably ensures the identification and documentation of conditions at each surface coal mining and reclamation site inspected.

(B) Any potential violation observed during an aerial inspection shall be investigated on site within three calendar days: *Provided*, That any indication of a condition, practice or violation constituting cause for issuance of a cessation order under section 521(a)(2) shall be investigated on site immediately, *And provided further*, That an on-site investigation of a potential violation observed during an aerial inspection shall not be considered to be an additional partial or complete inspection for the purposes of paragraphs (a) and (b) of this section.

(ii) Conduct an average of at least one complete inspection per calendar quarter of each active surface coal mining and reclamation operation. A complete inspection is an on-site review of a person's compliance with all permit conditions and requirements imposed under the applicable program within the entire area disturbed or affected by surface coal mining and reclamation operations.

(2) With respect to inactive surface coal mining and reclamation operations:

(i) Conduct an average of at least one complete inspection per calendar quarter of each inactive surface coal mining and reclamation operation; and

(ii) Conduct such partial inspections of each inactive surface coal mining and reclamation operation as are necessary to ensure effective enforcement of the regulatory program and the Act.

(iii) For purposes of this section, an inactive surface coal mining and reclamation operation is one for which—

(A) The Office has secured from the permittee the written notice provided for under §§ 816.131(b) or 817.131(b) of this chapter; or,

(B) Reclamation Phase II as defined at § 800.40 of this chapter has been completed.

(3) With respect to coal exploration operations, conduct such inspections as are necessary to ensure compliance with the Act by those coal explorations which substantially disturb the natural land surface.

(d) The inspections required under paragraphs (a), (b), and (c) of this section shall:

(1) Be carried out on an irregular basis, so as to monitor compliance at all operations, including those which operate nights, weekends, or holidays;

(2) Occur without prior notice to the permittee or any agent or employee of such permittee, except for necessary on-site meetings; and

(3) Include the prompt filing of inspection reports adequate to enforce the requirements of the applicable program.

(Pub. L. 95-87, 30 U.S.C. 1201 *et seq.*)

[47 FR 35635, Aug. 16, 1982, as amended at 48 FR 44781, Sept. 30, 1983]

§ 842.12 Requests for Federal inspections.

(a) A person may request a Federal inspection under § 842.11(b) by furnishing to an authorized representative of the Secretary a signed, written statement (or an oral report followed by a signed, written statement) giving the authorized representative reason to believe that a violation, condition or practice referred to in § 842.11(b)(1)(i) exists and that the State regulatory authority, if any, has been notified, in writing, of the existence of the violation, condition or practice. The statement shall set forth a phone number and address where the person can be contacted.

(b) The identity of any person supplying information to the Office relating to a possible violation or imminent danger or harm shall remain confidential with the Office, if requested by that person, unless that person elects to accompany the inspector on the inspection, or unless disclosure is required under the Freedom of Information Act (5 U.S.C. 552) or other Federal law.

(c) If a Federal inspection is conducted as a result of information provided to the Office by a person as described in paragraph (a) of this section, the person shall be notified as far in advance as practicable when the inspection is to occur and shall be allowed to accompany the authorized representative of the Secretary during the inspection. Such person has a right of entry to, upon and through the coal exploration or surface coal mining and reclamation operation about which he or she supplied information, but only if he or she is in the presence of and is under the control, direction and supervision of the authorized representative while on the mine property. Such right of entry does not include a right to enter buildings without consent of the person in control of the building or without a search warrant.

(d) Within ten days of the Federal inspection or, if there is no Federal inspection, within 15 days of receipt of the person's written statement, the

Office shall send the person the following.

(1) If a Federal inspection was made, a description of the enforcement action taken, which may consist of copies of the Federal inspection report and all notices of violation and cessation orders issued as a result of the inspection, or an explanation of why no enforcement action was taken;

(2) If no Federal inspection was conducted, an explanation of the reason why; and

(3) An explanation of the person's right, if any, to informal review of the action or inaction of the Office under § 842.15.

(e) The Office shall give copies of all materials in paragraphs (d)(1) and (d)(2) of this section within the time limits specified in those paragraphs to the person alleged to be in violation, except that the name of the person supplying information shall be removed unless disclosure of his or her identity is permitted under paragraph (b) of this section.

§ 842.13 Right of entry.

(a) Each authorized representative of the Secretary conducting a Federal inspection under § 842.11:

(1) Shall have a right of entry to, upon, and through any coal exploration or surface coal mining and reclamation operation without advance notice or a search warrant, upon presentation of appropriate credentials;

(2) May, at reasonable times and without delay, have access to and copy any records, and inspect any monitoring equipment or method of exploration or operation required under the applicable program; and,

(3) Shall have a right to gather physical and photographic evidence to document conditions, practices or violations at the site.

(b) No search warrant shall be required with respect to any activity under paragraph (a) of this section, except that a search warrant may be required for entry into a building.

§ 842.14 Review of adequacy and completeness of inspections.

Any person who is or may be adversely affected by a surface coal mining and reclamation operation or a coal exploration operation may notify the Director or his or her designee in writing of any alleged failure on the part of the Office to make adequate and complete or periodic Federal inspections. The notification shall include sufficient information to create a reasonable belief that the regulations of this part are not being complied with and to demonstrate that the person is or may be adversely affected. The Director or his or her designee shall within 15 days of receipt of the notification determine whether adequate and complete or periodic inspections have been made. The Director or his or her designee shall furnish the complainant with a written statement of the reasons for such determination and the actions, if any, taken to remedy the noncompliance.

§ 842.15 Review of decision not to inspect or enforce.

(a) Any person who is or may be adversely affected by a coal exploration or surface coal mining and reclamation operation may ask the Director or his or her designee to review informally an authorized representative's decision not to inspect or take appropriate enforcement action with respect to any violation alleged by that person in a request for Federal inspection under § 842.12. The request for review shall be in writing and include a statement of how the person is or may be adversely affected and why the decision merits review.

(b) The Director or his or her designee shall conduct the review and inform the person, in writing, of the results of the review within 30 days of his or her receipt of the request. The person alleged to be in violation shall also be given a copy of the results of the review, except that the name of the person who is or may be adversely affected shall not be disclosed unless confidentiality has been waived or disclosure is required under the Freedom of Information Act or other Federal law.

(c) Informal review under this section shall not affect any right to formal review under section 525 of the Act or to a citizen's suit under section 520 of the Act.

(d) Any determination made under paragraph (b) of this section shall constitute a decision of OSM within the meaning of 43 CFR 4.1281 and shall contain a right of appeal to the Office of Hearings and Appeals in accordance with 43 CFR Part 4.

§ 842.16 Availability of records.

(a) Copies of all records, reports, inspection materials, or information obtained by the Office under Title V of the Act, this chapter, a Federal program or Federal lands program, and a State program being enforced by the Office under section 504(b) or 521(b) of the Act and Part 733 of this chapter or §§ 842.11 or 842.12 shall be made immediately available to the public in the area of mining until at least five years after expiration of the period during which the subject operation is active or is covered by any portion of a reclamation bond so that they are conveniently available to residents of that area, except—

(1) As otherwise provided by Federal law; and

(2) For information not required to be made available under § 772.15, § 773.13(d), or § 840.14(d) of this chapter.

(b) The Office shall ensure compliance with paragraph (a) of this section by either:

(1) Making copies of all such records, reports, inspection materials, and other information available for public inspection at a Federal, State or local government office in the county where the mining is occurring or is proposed to occur; or

(2) At the Office's option and expense, providing copies of such information promptly by mail at the request of any resident of the area where the mining is occurring or is proposed to occur, provided that the Office shall maintain for public inspection at a Federal, State, or local government office in the county where the mining is occurring or is proposed to occur a description of the information available for mailing and the procedure for obtaining such information.

(c) Copies of documents and information required to be made available under paragraph (a) of this section shall be provided to the State regulatory authority, if any.

(Pub. L. 95-87, 30 U.S.C. 1201 *et seq.*)

[47 FR 35635, Aug. 16, 1982, as amended at 48 FR 44781, Sept. 30, 1983]

PART 843—FEDERAL ENFORCEMENT

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AUTHORITY: Secs. 102, 201, 501(b), 503, 504, 510, 517, 518, 520, 521, 523, 526 and 701 of Pub. L. 95-87, 91 Stat. 448, 449, 468, 470, 471, 480, 498, 499, 504, 510, 511 and 516 (30 U.S.C. 1202, 1211, 1251, 1253, 1254, 1260, 1267, 1268, 1271, 1273, 1275 and 1291).

SOURCE: 47 FR 35637, Aug. 16, 1982, unless otherwise noted.

§ 843.1 Scope.

This part sets forth general rules regarding enforcement by the Office of the Act, this chapter, any Federal program, the Federal lands program, State programs being enforced by the Office in whole or in part under section 504(b) or 521(b) of the Act and Part 733 of this chapter and (in limited circumstances) under § 842.11 or § 842.12 of this chapter, and all conditions of permits and coal exploration approvals or permits imposed under any of these programs, the Act, or this chapter.

§ 843.5 Definitions.

As used in this part, the following terms have the specified meanings:

Unwarranted failure to comply means the failure of a permittee to prevent the occurrence of any violation of his or her permit or any requirement of the Act due to indifference, lack of diligence, or lack of reasonable care, or the failure to abate any violation of such permit of the Act due to indifference, lack of diligence, or lack of reasonable care.

Willful violation means an act or omission which violates the Act, this chapter, the applicable program, or any permit condition required by the Act, this chapter, or the applicable program, committed by a person who intends the result which actually occurs.

§ 843.10 Information collection.

The information collection requirements contained in §§ 843.14(c) and 843.16 have been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned clearance number 1029-0052. The information is needed to ensure that violations can be corrected in a timely manner, to afford the operator an opportunity to respond to those violations, and to provide fairness in the enforcement process. The obligation to respond is mandatory.

§ 843.11 Cessation orders.

(a)(1) An authorized representative of the Secretary shall immediately order a cessation of surface coal mining and reclamation operations or of the relevant portion thereof, if he or she finds, on the basis of any Federal inspection, any condition or practice, or any violation of the Act, this chapter, any applicable program, or any condition of an exploration approval or permit imposed under any such program, the Act, or this chapter which:

(i) Creates an imminent danger to the health or safety of the public; or

(ii) Is causing or can reasonably be expected to cause significant, imminent environmental harm to land, air, or water resources.

(2) Surface coal mining and reclamation operations conducted by any person without a valid surface coal mining permit constitute a condition or practice which causes or can reasonably be expected to cause significant, imminent environmental harm to land, air or water resources, unless such operations:

(i) Are an integral, uninterrupted extension of previously permitted operations, and the person conducting such operations has filed a timely and complete application for a permit to conduct such operations; or

(ii) Were conducted lawfully without a permit under the interim regulatory program because no permit has been required for such operations by the State in which the operations were conducted.

(3) If the cessation ordered under paragraph (a)(1) of this section will not completely abate the imminent danger or harm in the most expeditious manner physically possible, the authorized representative of the Secretary shall impose affirmative obligations on the permittee to abate the imminent danger or significant environmental harm. The order shall specify the time by which abatement shall be accomplished.

(b)(1) When a notice of violation has been issued under § 843.12(a) and the permittee fails to abate the violation within the abatement period fixed or subsequently extended by the authorized representative, the authorized representative of the Secretary shall immediately order a cessation of coal exploration or surface coal mining and reclamation operations, or of the portion relevant to the violation.

(2) A cessation order issued under this paragraph (b) shall require the permittee to take all steps the authorized representative of the Secretary deems necessary to abate the violations covered by the order in the most expeditious manner physically possible.

(c) A cessation order issued under paragraphs (a) or (b) of this section shall be in writing, signed by the authorized representative who issues it, and shall set forth with reasonable specificity: (1) The nature of the condition, practice or violation; (2) the remedial action or affirmative obligation required, if any, including interim steps, if appropriate; (3) the time established for abatement, if appropriate; and (4) a reasonable description of the portion of the coal exploration or surface coal mining and reclamation operation to which it applies. The order shall remain in effect until the condition, practice or violation resulting in the issuance of the cessation order has been abated or until vacated, modified or terminated in writing by an authorized representative of the Secretary, or until the order expires pursuant to section 521(a)(5) of the Act and § 843.15.

(d) Reclamation operations and other activities intended to protect public health and safety and the environment shall continue during the period of any order unless otherwise provided in the order.

(e) An authorized representative of the Secretary may modify, terminate or vacate a cessation order for good cause, and may extend the time for abatement if the failure to abate within the time previously set was not caused by lack of diligence on the part of the permittee.

(f) An authorized representative of the Secretary shall terminate a cessation order by written notice to the permittee when he or she determines that all conditions, practices or violations listed in the order have been abated. Termination shall not affect the right of the Office to assess civil penalties for those violations under Part 845 of this chapter.

§ 843.12 Notices of violation.

(a)(1) An authorized representative of the Secretary shall issue a notice of violation if, on the basis of a Federal inspection carried out during the enforcement of a Federal program or Federal lands program or during Federal enforcement of a State program under section 504(b) or 521(b) of the Act and Part 733 of this chapter, he finds a violation of the Act, this chapter, the applicable program or any condition of a permit or an exploration approval imposed under such program, the Act, or this Chapter, which does not create an imminent danger or harm for which a cessation order must be issued under § 843.11.

(2) When, on the basis of any Federal inspection other than one described in paragraph (a)(1) of this section, an authorized representative of the Secretary determines that there exists a violation of the Act, the State program, or any condition of a permit or exploration approval required by the Act which does not create an imminent danger or harm for which a cessation order must be issued under § 843.11, the authorized representative shall give a written report of the violation to the State and to the permittee so that appropriate enforcement action can be taken by the State. Where the State fails within ten days after notification to take appropriate action to cause the violation to be corrected, or to show good cause for such failure, the authorized representative shall reinspect and, if the violation continues to exist, shall issue a notice of violation or cessation order, as appropriate. No additional notification to the State by the Office is required before the issuance of a notice of violation, if previous notification was given under § 842.11(b)(1)(ii)(B) of this chapter.

(b) A notice of violation issued under this section shall be in writing signed by the authorized representative who issues it, and shall set forth with reasonable specificity:

(1) The nature of the violation;

(2) The remedial action required, which may include interim steps;

(3) A reasonable time for abatement, which may include time for accomplishment of interim steps; and

(4) A reasonable description of the portion of the coal exploration or surface coal mining and reclamation operation to which it applies.

(c) An authorized representative of the Secretary may extend the time set for abatement or for accomplishment of an interim step, if the failure to meet the time previously set was not caused by lack of diligence on the part of the permittee. The total time for abatement under a notice of violation, including all extensions, shall not exceed 90 days from the date of issuance, except upon a showing by the permittee that it is not feasible to abate the violation within 90 calendar days due to one or more of the circumstances in paragraph (f) of this section. An extended abatement date pursuant to this section shall not be granted when the permittee's failure to abate within 90 days has been caused by a lack of diligence or intentional delay by the permittee in completing the remedial action required.

(d)(1) If the permittee fails to meet the time set for abatement the authorized representative shall issue a cessation order under § 843.11(b).

(2) If the permittee fails to meet the time set for accomplishment of any interim step the authorized representative may issue a cessation order under § 843.11(b).

(e) An authorized representative of the Secretary shall terminate a notice of violation by written notice to the permittee when he determines that all violations listed in the notice of violation have been abated. Termination shall not affect the right of the Office to assess civil penalties for those violations under 30 CFR Part 845.

(f) Circumstances which may qualify a surface coal mining operation for an abatement period of more than 90 days are:

(1) Where the permittee of an ongoing permitted operation has timely applied for and diligently pursued a permit renewal or other necessary approval of designs or plans but such permit or approval has not been or will not be issued within 90 days after a valid permit expires or is required, for reasons not within the control of the permittee;

(2) Where there is a valid judicial order precluding abatement within 90 days as to which the permittee has diligently pursued all rights of appeal and as to which he or she has no other effective legal remedy;

(3) Where the permittee cannot abate within 90 days due to a labor strike;

(4) Where climatic conditions preclude abatement within 90 days, or where, due to climatic conditions, abatement within 90 days clearly would cause more environmental harm than it would prevent; or

(5) Where abatement within 90 days requires action that would violate safety standards established by statute or regulation under the Mine Safety and Health Act of 1977.

(g) Whenever an abatement time in excess of 90 days is permitted, interim abatement measures shall be imposed to the extent necessary to minimize harm to the public or the environment.

(h) If any of the conditions in paragraph (f) of this section exists, the permittee may request the authorized representative to grant an abatement period exceeding 90 days. The authorized representative shall not grant such an abatement period without the concurrence of the Director or his or her designee and the abatement period granted shall not exceed the shortest possible time necessary to abate the violation. The permittee shall have the burden of establishing by clear and convincing proof that he or she is entitled to an extension under the provisions of § 843.12(c) and (f). In determining whether or not to grant an abatement period exceeding 90 days the authorized representative may consider any relevant written or oral information from the permittee or any other source. The authorized representative shall promptly and fully document in the file his or her reasons for granting or denying the request. The authorized representative's immediate supervisor shall review this document before concurring in or disapproving the extended abatement date and shall promptly and fully document the reasons for his or her concurrence or disapproval in the file.

(i) Any determination made under paragraph (h) of this section shall contain a right of appeal to the Office of Hearings and Appeals in accordance with 43 CFR 4.1281 and the regulations at 43 CFR Part 4.

(j) No extension granted under paragraph (h) of this section may exceed 90 days in length. Where the condition or circumstance which prevented abatement within 90 days exists at the expiration of any such extension, the permittee may request a further extension in accordance with the procedures of paragraph (h) of this section.

§ 843.13 Suspension or revocation of permits.

(a)(1) The Director shall issue an order to a permittee requiring him or her to show cause why his or her permit and right to mine under the Act should not be suspended or revoked, if the Director determines that a pattern of violations of any requirements of the Act, this chapter, the applicable program, or any permit condition required by the Act exists or has existed, and that the violations were caused by the permittee willfully or through unwarranted failure to comply with those requirements or conditions. Violations by any person conducting surface coal mining operations on behalf of the permittee shall be attributed to the permittee, unless the permittee establishes that they were acts of deliberate sabotage. The Director shall promptly file a copy of any order to show cause with the Office of Hearings and Appeals and the State regulatory authority, if any.

(2) The Director may determine that a pattern of violations exists or has existed, based upon two or more Federal inspections of the permit area within any 12-month period, after considering the circumstances, including:

(i) The number of violations, cited on more than one occasion, of the same or related requirements of the Act, this chapter, the applicable program, or the permit;

(ii) The number of violations, cited on more than one occasion, of different requirements of the Act, this chapter, the applicable program, or the permit; and

(iii) The extent to which the violations were isolated departures from lawful conduct.

(3) The Director shall promptly review the history of violations of any permittee who has been cited for violations of the same or related requirements of the Act, this chapter, the applicable program, or the permit during three or more Federal inspections of the permit area within any 12-month period. If, after such review, the Director determines that a pattern of violations exists or has existed, he or she shall issue an order to show cause as provided in paragraph (a)(1) of this section.

(4)(i) In determining the number of violations within any 12-month period, the Director shall consider only violations issued as a result of a Federal inspection carried out—

(A) During enforcement of a Federal program or a Federal lands program;

(B) During the interim program and before the applicable State program was approved pursuant to section 502 or 504 of the Act; or

(C) During Federal enforcement of a State program in accordance with section 504(b) or 521(b) of the Act.

(ii) The Director may not consider violations issued as a result of inspections other than those mentioned in paragraph (a)(4)(i) of this section in determining whether to exercise his or her discretion under paragraph (a)(2) of this section, except as evidence of the willful or unwarranted nature of the permittee's failure to comply.

(b) If the permittee files an answer to the show cause order and requests a hearing under 43 CFR Part 4, a public hearing shall be provided as set forth in that part. The Office of Hearings and Appeals shall give thirty days written notice of the date, time and place of the hearing to the Director, the permittee, the State regulatory authority, if any, and any intervenor. Upon receipt of the notice, the Director shall publish it, if practicable, in a newspaper of general circulation in the area of the surface coal mining and reclamation operations, and shall post it at the State or field office closest to those operations.

(c) Within sixty days after the hearing, and within the time limits set forth in 43 CFR Part 4, the Office of Hearings and Appeals shall issue a written determination as to whether a pattern of violations exists and, if appropriate, an order. If the Office of Hearings and Appeals revokes or suspends the permit and the permittee's right to mine under the Act, the permittee shall immediately cease surface coal mining operations on the permit area and shall:

(1) If the permit and the right to mine under the Act are revoked, complete reclamation within the time specified in the order; or

(2) If the permit and the right to mine under the Act are suspended, complete all affirmative obligations to abate all conditions, practices, or violations as specified in the order.

(d) Whenever a permittee fails to abate a violation contained in a notice of violation or cessation order within the abatement period set in the notice or order or as subsequently extended, the Director shall review the permittee's history of violations to determine whether a pattern of violations exists pursuant to this section, and shall issue an order to show cause as appropriate pursuant to § 845.15(b)(2) of this chapter.

§ 843.14 Service of notices of violation, cessation orders, and show cause orders.

(a) A notice of violation, cessation order, or show cause order shall be served on the person to whom it is directed or his or her designated agent promptly after issuance, as follows:

(1) By tendering a copy at the coal exploration or surface coal mining and reclamation operation to the designated agent or to the individual who, based upon reasonable inquiry, appears to be in charge. If no such individual can be located at the site, a copy may be tendered to any individual at the site who appears to be an employee or agent of the person to whom the notice or order is issued. Service shall be complete upon tender of the notice or order and shall not be deemed incomplete because of refusal to accept.

(2) As an alternative to paragraph (a)(1) of this section, service may be made by sending a copy of the notice or order by certified mail or by hand to the permittee or his or her designated agent. Service shall be complete upon tender of the notice or order or of the mail and shall not be deemed incomplete because of refusal to accept.

(b) Designation by any person of an agent for service of notices and orders shall be made in writing to the appropriate State or field office of the Office.

(c) The Office shall furnish copies of notices and orders to the State regulatory authority, if any, promptly after their issuance. The Office may furnish copies to any person having an interest in the coal exploration, surface coal mining and reclamation operation, or the permit area.

§ 843.15 Informal public hearing.

(a) Except as provided in paragraphs (b) and (c) of this section, a notice of violation or cessation order which requires cessation of mining, expressly or by necessary implication, shall expire within 30 days after it is served unless an informal public hearing has been held within that time. The hearing shall be held at or reasonably close to the mine site so that it may be viewed during the hearing or at any other location acceptable to the Office and the person to whom the notice or order was issued. The Office of Surface Mining office nearest to the mine site shall be deemed to be reasonably close to the mine site unless a closer location is requested and agreed to by the Office. Expiration of a notice or order shall not affect the Office's right to assess civil penalties with respect to the period during which the notice or order was in effect. No hearing will be required where the condition, practice, or violation in question has been abated or the hearing has been waived. For purposes of this section only, "mining" includes (1) extracting coal from the earth or from coal waste piles and transporting it within or from the permit area, and (2) the processing, cleaning, concentrating, preparing or loading of coal where such operations occur at a place other than at a mine site.

(b) A notice of violation or cessation order shall not expire as provided in paragraph (a) of this section if the informal public hearing has been waived, or if, with the consent of the person to whom the notice or order was issued, the informal public hearing is held later than 30 days after the notice or order was served. For purposes of this subsection:

(1) The informal public hearing will be deemed waived if the person to whom the notice or order was issued:

(i) Is informed, by written notice served in the manner provided in paragraph (b)(2) of this section, that he or she will be deemed to have waived an informal public hearing unless he or she requests one within 30 days after service of the notice; and

(ii) Fails to request an informal public hearing within that time.

(2) The written notice referred to in paragraph (b)(1)(i) of this section shall be delivered to such person by an authorized representative or sent by certified mail to such person no later than 5 days after the notice or order is served on such person.

(3) The person to whom the notice or order is issued shall be deemed to have consented to an extension of the

time for holding the informal public hearing if his or her request is received on or after the 21st day after service of the notice or order. The extension of time shall be equal to the number of days elapsed after the 21st day.

(c) The Office shall give as much advance notice as is practicable of the time, place, and subject matter of the informal public hearing to:

(1) The person to whom the notice or order was issued;

(2) Any person who filed a report which led to that notice or order; and

(3) The State regulatory authority, if any.

(d) The Office shall also post notice of the hearing at the State or field office closest to the mine site and, where practicable, publish it in a newspaper of general circulation in the area of the mine.

(e) Section 554 of Title 5 of the United States Code, regarding requirements for formal adjudicatory hearings, shall not govern informal public hearings. An informal public hearing shall be conducted by a representative of the Office, who may accept oral or written arguments and any other relevant information from any person attending.

(f) Within five days after the close of the informal public hearing, the Office shall affirm, modify, or vacate the notice or order in writing. The decision shall be sent to—

(1) The person to whom the notice or order was issued;

(2) Any person who filed a report which led to the notice or order; and

(3) The State regulatory authority, if any.

(g) The granting or waiver of an informal public hearing shall not affect the right of any person to formal review under section 518(b), 521(a)(4), or 525 of the Act.

(h) The person conducting the hearing for the Office shall determine whether or not the mine site should be viewed during the hearing. In making this determination the only consideration shall be whether a view of the mine site will assist the person conducting the hearing in reviewing the appropriateness of the enforcement action or of the required remedial action.

§ 843.16 Formal review of citations.

(a) A person issued a notice of violation or cessation order under § 843.11 or § 843.12, or a person having an interest which is or may be adversely affected by the issuance, modification, vacation or termination of a notice or order, may request review of that action by filing an application for review and request for hearing under 43 CFR Part 4, within 30 days after receiving notice of the action.

(b) The filing of an application for review and request for a hearing under this Section shall not operate as a stay of any notice or order, or of any modification, termination or vacation of either.

§ 843.17 Failure to give notice and lack of information.

No notice of violation, cessation order, show cause order, or order revoking or suspending a permit may be vacated for failure to give the notice to the State regulatory authority required under § 842.11(b)(1)(ii)(B) of this chapter or because it is subsequently determined that the Office did not have information sufficient, under §§ 842.11(b)(1) and 842.11(b)(2) of this chapter, to justify an inspection.

§ 843.18 Inability to comply.

(a) No cessation order or notice of violation issued under this part may be vacated because of inability to comply.

(b) Inability to comply may not be considered in determining whether a pattern of violations exists.

(c) Unless caused by lack of diligence, inability to comply may be considered only in mitigation of the amount of civil penalty under Part 845 of this chapter and of the duration of the suspension of a permit under § 843.13(c).

§ 843.20 Compliance conference.

(a) A permittee may request an onsite compliance conference with an authorized representative to review the compliance status of any condition or practice proposed at any coal exploration or surface coal mining and reclamation operation. Any such conference shall not constitute an inspection within the meaning of section 517 of the Act and § 842.11.

(b) The Office may accept or refuse any request to conduct a compliance conference under paragraph (a). Where the Office accepts such a request, reasonable notice of the scheduled date and time of the compliance conference shall be given to the permittee.

(c) The authorized representative at any compliance conference shall review such proposed conditions and practices as the permittee may request in order to determine whether any such condition or practice may become a violation of any requirement of the Act of any applicable permit or exploration approval.

(d) Neither the holding of a compliance conference under this section nor any opinion given by the authorized representative at such a conference shall affect:

(1) Any rights or obligations of the Office or of the permittee with respect to any inspection, notice of violation or cessation order, whether prior or subsequent to such conference; or

(2) The validity of any notice of violation or cessation order issued with respect to any condition or practice reviewed at the compliance conference.

PART 845—CIVIL PENALTIES

Sec.

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AUTHORITY: Secs. 102, 201, 501(b), 517, 518, 521, 523 and 525 of Pub. L. 95-87, 91 Stat. 448, 449, 468, 498, 499, 504, 510 and 511 (30 U.S.C. 1202, 1211, 1251, 1267, 1268, 1271, 1273 and 1275).

SOURCE: 47 FR 35640, Aug. 16, 1982, unless otherwise noted.

§ 845.1 Scope.

This part covers the assessment of civil penalties under section 518 of the Act with respect to cessation orders and notices of violation issued under Part 843 (Federal enforcement).

§ 845.2 Objective.

Civil penalties are assessed under section 518 of the Act and this part to deter violations and to ensure maximum compliance with the terms and purposes of the Act on the part of the coal mining industry.

§ 845.11 How assessments are made.

The Office shall review each notice of violation and cessation order in accordance with the assessment procedures described in 30 CFR 845.12, 845.13, 845.14, 845.15, and 845.16 to determine whether a civil penalty will be assessed, the amount of the penalty, and whether each day of a continuing violation will be deemed a separate violation for purposes of the total penalty assessed.

§ 845.12 When penalty will be assessed.

(a) The Office shall assess a penalty for each cessation order.

(b) The Office shall assess a penalty for each notice of violation, if the violation is assigned 31 points or more under the point system described in 30 CFR 845.13.

(c) The Office may assess a penalty for each notice of violation assigned 30 points or less under the point system described in 30 CFR 845.13. In determining whether to assess a penalty, the Office shall consider the factors listed in 30 CFR 845.13(b).

§ 845.13 Point system for penalties.

(a) The Office shall use the point system described in this section to determine the amount of the penalty and, in the case of notices of violation, whether a mandatory penalty should be assessed as provided in 30 CFR 845.12(b).

(b) Points shall be assigned as follows:

(1) *History of previous violations.* The Office shall assign up to 30 points based on the history of previous violations. One point shall be assigned for each past violation contained in a notice of violation. Five points shall be assigned for each violation (but not a condition or practice) contained in a cessation order. The history of previous violations, for the purpose of assigning points, shall be determined and the points assigned with respect to a particular coal exploration or surface coal mining operation. Points shall be assigned as follows:

(i) A violation shall not be counted, if the notice or order is the subject of pending administrative or judicial review or if the time to request such review or to appeal any administrative or judicial decision has not expired, and thereafter it shall be counted for only one year.

(ii) No violation for which the notice or order has been vacated shall be counted; and

(iii) Each violation shall be counted without regard to whether it led to a civil penalty assessment.

(2) *Seriousness.* The Office shall assign up to 30 points based on the seriousness of the violation, as follows:

(i) *Probability of occurrence.* The Office shall assign up to 15 points based on the probability of the occurrence of the event which a violated standard is designed to prevent. Points shall be assessed according to the following schedule:

Probability of Occurrence	Points
None	0
Insignificant	1-4
Unlikely	5-9
Likely	10-14
Occurred	15

(ii) *Extent of potential or actual damage.* The Office shall assign up to 15 points, based on the extent of the potential or actual damage, in terms of area and impact on the public or environment, as follows:

(A) If the damage or impact which the violated standard is designed to prevent would remain within the coal exploration or permit area, the Office shall assign zero to seven points, depending on the duration and extent of the damage or impact.

(B) If the damage or impact which the violated standard is designed to prevent would extend outside the coal exploration or permit area, the Office shall assign eight to fifteen points, depending on the duration and extent of the damage or impact

(iii) *Alternative.* In the case of a violation of an administrative requirement, such as a requirement to keep records, the Office shall, in lieu of paragraphs (b)(2) (i) and (ii), assign up to 15 points for seriousness, based upon the extent to which enforcement is obstructed by the violation.

(3) *Negligence.* (i) The Office shall assign up to 25 points based on the degree of fault of the person to whom the notice or order was issued in causing or failing to correct the violation, condition, or practice which led to the notice or order, either through act or omission. Points shall be assessed as follows:

(A) A violation which occurs through no negligence shall be assigned no penalty points for negligence;

(B) A violation which is caused by negligence shall be assigned 12 points or less, depending on the degree of negligence;

(C) A violation which occurs through a greater degree of fault than negligence shall be assigned 13 to 25 points, depending on the degree of fault.

(ii) In determining the degree of negligence involved in a violation and the number of points to be assigned, the following definitions apply:

(A) *No negligence* means an inadvertent violation which was unavoidable by the exercise of reasonable care.

(B) *Negligence* means the failure of a permittee to prevent the occurrence of any violation of his or her permit or any requirement of the Act or this Chapter due to indifference, lack or diligence, or lack of reasonable care, or the failure to abate any violation of such permit or the Act due to indifference, lack of diligence, or lack of reasonable care.

(C) *A greater degree of fault than negligence* means reckless, knowing, or intentional conduct.

(iii) In calculating points to be assigned for negligence, the acts of all persons working on the coal exploration or surface coal mining and reclamation site shall be attributed to the person to whom the notice or order was issued, unless that person establishes that they were acts of deliberate sabotage.

(4) Good faith in attempting to achieve compliance.

(i) The Office shall add points based on the degree of good faith of the person to whom the notice or order was issued in attempting to achieve rapid compliance after notification of the violation. Points shall be assigned as follows:

Degree of good faith	Points
Rapid compliance	1 to 10
Normal compliance	0

(ii) The following definitions shall apply under paragraph (b)(4)(i) of this section:

(A) Rapid compliance means that the person to whom the notice or order was issued took extraordinary measures to abate the violation in the shortest possible time and that abatement was achieved before the time set for abatement.

(B) Normal compliance means the person to whom the notice or order was issued abated the violation within the time given for abatement.

(iii) If the consideration of this criterion is impractical because of the length of the abatement period, the assessment may be made without considering this criterion and may be reassessed after the violation has been abated.

§ 845.14 Determination of amount of penalty.

The Office shall determine the amount of any civil penalty by converting the total number of points assigned under 30 CFR 845.13 to a dollar amount, according to the following schedule:

Points	Dollars
1	20
2	40
3	60
4	80
5	100
6	120
7	140
8	160
9	180
10	200
11	220
12	240
13	260
14	280
15	300
16	320
17	340
18	360
19	380
20	400
21	420
22	440
23	460
24	480
25	500
26	600
27	700
28	800
29	900
30	1,000
31	1,100
32	1,200
33	1,300
34	1,400
35	1,500
36	1,600
37	1,700
38	1,800
39	1,900
40	2,000
41	2,100
42	2,200
43	2,300
44	2,400
45	2,500
46	2,600
47	2,700
48	2,800
49	2,900
50	3,000
51	3,100
52	3,200
53	3,300
54	3,400
55	3,500
56	3,600
57	3,700
58	3,800
59	3,900
60	4,000
61	4,100
62	4,200
63	4,300
64	4,400
65	4,500
66	4,600
67	4,700
68	4,800
69	4,900
70 and above	5,000

§ 845.15 Assessment of separate violations for each day.

(a) The Office may assess separately a civil penalty for each day from the date of issuance of the notice of violation or cessation order to the date set for abatement of the violation. In determining whether to make such an assessment, the Office shall consider the factors listed in 30 CFR 845.13 and may consider the extent to which the person to whom the notice or order was issued gained any economic benefit as a result of a failure to comply. For any violation which continues for two or more days and which is assigned more than 70 points under § 845.13(b), the Office shall assess a penalty for a minimum of two separate days.

(b) In addition to the civil penalty provided for in paragraph (a), whenever a violation contained in a notice of violation or cessation order has not been abated within the abatement period set in the notice or order or as subsequently extended pursuant to section 521(a) of the Act, a civil penalty of not less than $750 shall be assessed for each day during which such failure to abate continues, except that:

(1)(i) If suspension of the abatement requirements of the notice or order is ordered in a temporary relief proceeding under section 525(c) of the Act, after a determination that the person to whom the notice or order was issued will suffer irreparable loss or damage from the application of the requirements, the period permitted for abatement shall not end until the date on which the Office of Hearings and Appeals issues a final order with respect to the violation in question; and

(ii) If the person to whom the notice or order was issued initiates review proceedings under section 526 of the Act with respect to the violation, in which the obligations to abate are suspended by the court pursuant to section 526(c) of the Act, the daily assessment of a penalty shall not be made for any period before entry of a final order by the court;

(2) Such penalty for the failure to abate the violation shall not be assessed for more than 30 days for each such violation. If the permittee has not abated the violation within the 30-day period, the Office shall take appropriate action pursuant to section 518(e), 518(f), 521(a)(4), or 521(c) of the Act within 30 days to ensure that abatement occurs or to ensure that there will not be a reoccurrence of the failure to abate.

§ 845.16 Waiver of use of formula to determine civil penalty.

(a) The Director, upon his own initiative or upon written request received within 15 days of issuance of a notice of violation or a cessation order, may waive the use of the formula contained in 30 CFR 845.13 to set the civil penalty, if he or she determines that, taking into account exceptional factors present in the particular case, the penalty is demonstrably unjust. However, the Director shall not waive the use of the formula or reduce the proposed assessment on the basis of an argument that a reduction in the proposed penalty could be used to abate violations of the Act, this chapter, any applicable program, or any condition of any permit or exploration approval. The basis for every waiver shall be fully explained and documented in the records of the case.

(b) If the Director waives the use of the formula, he or she shall use the criteria set forth in 30 CFR 845.13(b) to determine the appropriate penalty. When the Director has elected to waive the use of the formula, he or she shall give a written explanation of the basis for the assessment made to the person to whom the notice or order was issued.

§ 845.17 Procedures for assessment of civil penalties.

(a) Within 15 days of service of a notice or order, the person to whom it was issued may submit written information about the violation to the Office and to the inspector who issued the notice of violation or cessation order. The Office shall consider any information so submitted in determining the facts surrounding the violation and the amount of the penalty.

(b) The Office shall serve a copy of the proposed assessment and of the worksheet showing the computation of the proposed assessment on the person to whom the notice or order was issued, by certified mail, within 30 days of the issuance of the notice or order.

(1) If the mail is tendered at the address of that person set forth in the sign required under 30 CFR 816.11, or at any address at which that person is in fact located, and he or she refuses to accept delivery of or to collect such mail, the requirements of this paragraph shall be deemed to have been complied with upon such tender.

(2) Failure by the Office to serve any proposed assessment within 30 days shall not be grounds for dismissal of all or part of such assessment unless the person against whom the proposed penalty has been assessed—

(i) Proves actual prejudice as a result of the delay; and,

(ii) Makes a timely objection to the delay. An objection shall be timely only if made in the normal course of administrative review.

(c) Unless a conference has been requested, the Office shall review and reassess any penalty if necessary to consider facts which were not reasonably available on the date of issuance of the proposed assessment because of the length of the abatement period. The Office shall serve a copy of any such reassessment and of the worksheet showing the computation of the reassessment in the manner provided in paragraph (b), within 30 days after the date the violation is abated.

§ 845.18 Procedures for assessment conference.

(a) The Office shall arrange for a conference to review the proposed assessment or reassessment, upon written request of the person to whom notice or order was issued, if the request is received within 15 days from the date the proposed assessment or reassessment is mailed.

(b)(1) The Office shall assign a conference officer to hold the assessment conference. The assessment conference shall not be governed by section 554 of Title 5 of the United States Code, regarding requirements for formal adjudicatory hearings. The assessment conference shall be held within 60 days from the date of issuance of the proposed assessment or the end of the abatement period, whichever is later, *Provided:* That a failure by the Office to hold such conference within 60 days shall not be grounds for dismissal of all or part of an assessment unless the person against whom the proposed penalty has been assessed proves actual prejudice as a result of the delay.

(2) The Office shall post notice of the time and place of the conference at the State or field office closest to the mine at least 5 days before the conference. Any person shall have a right to attend and participate in the conference.

(3) The conference officer shall consider all relevant information on the violation. Within 30 days after the conference is held, the conference officer shall either:

(i) Settle the issues, in which case a settlement agreement shall be prepared and signed by the conference officer on behalf of the Office and by the person assessed; or

(ii) Affirm, raise, lower, or vacate the penalty.

(4) An increase or reduction of a proposed civil penalty assessment of more than 25 percent and more than $500 shall not be final and binding on the Secretary, until approved by the Director or his or her designee.

(c) The conference officer shall promptly serve the person assessed with a notice of his or her action in the manner provided in 30 CFR 845.17(b) and shall include a worksheet if the penalty has been raised or lowered. The reasons for the conference officer's action shall be fully documented in the file.

(d)(1) If a settlement agreement is entered into, the person assessed will be deemed to have waived all rights to further review of the violation or penalty in question, except as otherwise expressly provided for in the settlement agreement. The settlement agreement shall contain a clause to this effect.

(2) If full payment of the amount specified in the settlement agreement is not received by the Office within 30 days after the date of signing, the Office may enforce the agreement or rescind it and proceed according to

paragraph (b)(3)(ii) within 30 days from the date of the rescission.

(e) The conference officer may terminate the conference when he or she determines that the issues cannot be resolved or that the person assessed is not diligently working toward resolution of the issues.

(f) At formal review proceedings under sections 518, 521(a)(4), and 525 of the Act, no evidence as to statements made or evidence produced by one party at a conference shall be introduced as evidence by another party or to impeach a witness.

§ 845.19 Request for hearing.

(a) The person charged with the violation may contest the proposed penalty or the fact of the violation by submitting a petition and an amount equal to the proposed penalty or, if a conference has been held, the reassessed or affirmed penalty to the Office of Hearings and Appeals (to be held in escrow as provided in paragraph (b) of this section) within 30 days from receipt of the proposed assessment or reassessment or 15 days from the date of service of the conference officer's action, whichever is later. The fact of the violation may not be contested if it has been decided in a review proceeding commenced under 30 CFR 843.16.

(b) The Office of Hearings and Appeals shall transfer all funds submitted under paragraph (a) of this section to the Office, which shall hold them in escrow pending completion of the administrative and judicial review process, at which time it shall disburse them as provided in 30 CFR 845.20.

§ 845.20 Final assessment and payment of penalty.

(a) If the person to whom a notice of violation or cessation order is issued fails to request a hearing as provided in § 845.19, the proposed assessment shall become a final order of the Secretary and the penalty assessed shall become due and payable upon expiration of the time allowed to request a hearing.

(b) If any party requests judicial review of a final order of the Secretary, the proposed penalty shall continue to be held in escrow until completion of the review. Otherwise, subject to paragraph (c) of this section, the escrowed funds shall be transferred to the Office in payment of the penalty, and the escrow shall end.

(c) If the final decision in the administrative and judicial review results in an order reducing or eliminating the proposed penalty assessed under this part, the Office shall within 30 days of receipt of the order refund to the person assessed all or part of the escrowed amount, with interest from the date of payment into escrow to the date of the refund at the rate of 6 percent or at the prevailing Department of the Treasury rate, whichever is greater.

(d) If the review results in an order increasing the penalty, the person to whom the notice or order was issued shall pay the difference to the Office within 15 days after the order is mailed to such person.

SUBCHAPTER M—TRAINING, EXAMINATION, AND CERTIFICATION OF BLASTERS

PART 850—PERMANENT REGULATORY PROGRAM REQUIREMENTS—STANDARDS FOR CERTIFICATION OF BLASTERS

Sec.
850.1 Scope.
850.5 Definition.
850.10 Information collection.
850.12 Responsibility.
850.13 Training.
850.14 Examination.
850.15 Certification.

AUTHORITY: Pub. L. 95-87, 30 U.S.C. 1201 *et seq.*

SOURCE: 48 FR 9492, Mar. 4, 1983, unless otherwise noted.

§ 850.1 Scope.

This part establishes the requirements and the procedures applicable to the development of regulatory programs for training, examination, and certification of persons engaging in or directly responsible for the use of explosives in surface coal mining operations.

§ 850.5 Definition.

As used in this part—

Blaster means a person directly responsible for the use of explosives in surface coal mining operations who is certified under this part.

§ 850.10 Information collection.

The information collection requirements contained in this part have been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned clearance number 1029-0080. The information is being collected to meet the requirements of sections 503, 515, and 719 of Pub. L. 95-87. This information will be used by the regulatory authority to assist in implementing the blaster certification program. The obligation to respond is mandatory.

§ 850.12 Responsibility.

(a) The regulatory authority is responsible for promulgating rules governing the training, examination, certification and enforcement of a blaster certification program for surface coal mining operations. When the regulatory authority is a State, the State shall submit these rules of the Office of Surface Mining for approval under Parts 731 and 732 of this chapter.

(b) The regulatory authority shall develop and adopt a program to examine and certify all persons who are directly responsible for the use of explosives in a surface coal mining operation within 12 months after approval of a State program or implementation of a Federal program or within 12 months after March 4, 1983 of this rule, whichever is later. The Director may approve an extension of the 12-month period upon a demonstration of good cause.

[48 FR 9492, Mar. 4, 1983, as amended at 48 FR 44781, Sept. 30, 1983]

§ 850.13 Training.

(a) The regulatory authority shall establish procedures which require that—

(1) Persons seeking to become certified as blasters receive training including, but not limited to, the technical aspects of blasting operations and State and Federal laws governing the storage, transportation, and use of explosives; and

(2) Persons who are not certified and who are assigned to a blasting crew or assist in the use of explosives receive direction and on-the-job training from a blaster.

(b) The regulatory authority shall ensure that courses are available to train persons responsible for the use of explosives in surface coal mining operations. The courses shall provide training and discuss practical applications of—

(1) Explosives, including—

(i) Selection of the type of explosive to be used;

(ii) Determination of the properties of explosives which will produce desired results at an acceptable level of risk; and

(iii) Handling, transportation, and storage;

(2) Blast designs, including—

(i) Geologic and topographic considerations;

(ii) Design of a blast hole, with critical dimensions;

(iii) Pattern design, field layout, and timing of blast holes; and

(iv) Field applications;

(3) Loading blastholes, including priming and boostering;

(4) Initiation systems and blasting machines;

(5) Blasting vibrations, airblast, and flyrock, including—

(i) Monitoring techniques, and

(ii) Methods to control adverse affects;

(6) Secondary blasting applications;

(7) Current Federal and State rules applicable to the use of explosives;

(8) Blast records;

(9) Schedules;

(10) Preblasting surveys, including—

(i) Availability,

(ii) Coverage, and

(iii) Use of in-blast design;

(11) Blast-plan requirements;

(12) Certification and training;

(13) Signs, warning signals, and site control;

(14) Unpredictable hazards, including—

(i) Lightning,

(ii) Stray currents,

(iii) Radio waves, and

(iv) Misfires.

§ 850.14 Examination.

(a) The regulatory authority shall ensure that candidates for blaster certification are examined by reviewing and verifying the—

(1) Competence of persons directly responsible for the use of explosives in surface coal mining operations through a written examination in technical aspects of blasting and State and Federal laws governing the storage, use, and transportation of explosives; and

(2) Practical field experience of the candidates as necessary to qualify a person to accept the responsibility for blasting operations in surface coal mining operations. Such experience shall demonstrate that the candidate possesses practical knowledge of blasting techniques, understands the hazards involved in the use of explosives, and otherwise has exhibited a pattern of conduct consistent with the acceptance of responsibility for blasting operations.

(b) Applicants for blaster certification shall be examined, at a minimum, in the topics set forth in § 850.13(b).

§ 850.15 Certification.

(a) *Issuance of certification.* The regulatory authority shall certify for a fixed period those candidates examined and found to be competent and to have the necessary experience to accept responsibility for blasting operations in surface coal mining operations.

(b) *Suspension and revocation.* (1) The regulatory authority, when practicable, following written notice and opportunity for a hearing, may, and upon a finding of willful conduct, shall suspend or revoke the certification of a blaster during the term of the certification or take other necessary action for any of the following reasons:

(i) Noncompliance with any order of the regulatory authority.

(ii) Unlawful use in the work place of, or current addiction to, alcohol, narcotics, or other dangerous drugs.

(iii) Violation of any provision of the State or Federal explosives laws or regulations.

(iv) Providing false information or a misrepresentation to obtain certification.

(2) If advance notice and opportunity for hearing cannot be provided, an opportunity for a hearing shall be provided as soon as practical following the suspension, revocation, or other adverse action.

(3) Upon notice of a revocation, the blaster shall immediately surrender to the regulatory authority the revoked certificate.

(c) *Recertification.* The regulatory authority may require the periodic reexamination, training, or other demonstration of continued blaster competency.

(d) *Protection of certification.* Certified blasters shall take every reasonable precaution to protect their certificates from loss, theft, or unauthorized duplication. Any such occurrence shall be reported immediately to the certifying authority.

(e) *Conditions.* The regulatory authority shall specify conditions for maintaining certification which shall include the following:

(1) A blaster shall immediately exhibit his or her certificate to any authorized representative of the regulatory authority or the Office upon request.

(2) Blasters' certifications shall not be assigned or transferred.

(3) Blasters shall not delegate their responsibility to any individual who is not a certified blaster.

SUBCHAPTERS N–O [RESERVED]

SUBCHAPTER P—PROTECTION OF EMPLOYEES

PART 865—PROTECTION OF EMPLOYEES

Sec.
865.1 Scope.
865.11 Protected activity.
865.12 Procedures for filing an application for review of discrimination.
865.13 Investigation and conference.
865.14 Request for hearing.
865.15 Formal adjudicatory proceedings.

AUTHORITY. Secs. 201, 501, 502 and 703, Pub. L. 95-87, 91 Stat. 445 (30 U.S.C. 1201.)

Source: 42 FR 62712, Dec. 13, 1977, unless otherwise noted. Redesignated at 44 FR 15312, Mar. 13, 1979.

§ 865.1 Scope.

This part establishes procedures regarding—

(a) The reporting of acts of discriminatory discharge or other acts of discrimation under the Act caused by any person. Forms of discrimination include, but are not limited to: Firing, suspension, transfer or demotion, denial or reduction of wages and benefits, coercion by promises of benefits or threats of reprisal, and interference with the exercise of any rights afforded under the Act;

(b) The investigation of applications for review and holding of informal conferences about the alleged discrimination; and

(c) The request for formal hearings with the Office of Hearings and Appeals.

§ 865.11 Protected activity.

(a) No person shall discharge or in any other way discriminate against or cause to be fired or discriminated against any employee or any authorized representative of employees because that employee or representative has—

(1) Filed, instituted or caused to be filed or instituted any proceedings under the Act by—

(i) Reporting alleged violations or dangers to the Secretary, the State Regulatory Authority, or the employer or his representative.

(ii) Requesting an inspection or investigation; or

(iii) Taking any other action which may result in a proceeding under the Act.

(2) Made statements, testified, or is about to do so—

(i) In any informal or formal adjudicatory proceeding;

(ii) In any informal conference proceeding;

(iii) In any rulemaking proceeding;

(iv) In any investigation, inspection or other proceeding under the Act;

(v) In any judicial proceeding under the Act.

(3) Has exercised on his own behalf or on behalf of others any right granted by the Act.

(b) Each employer conducting operations which are regulated under this Act, shall within 30 days from the effective day of these regulations, provide a copy of this part to all current employees and to all new employees at the time of their hiring.

[42 FR 62712, Dec. 13, 1977; 43 FR 2722, Jan. 19, 1978. Redesignated at 44 FR 15312, Mar. 13, 1979]

§ 865.12 Procedures for filing an application for review of discrimination.

(a) *Who may file.* Any employee, or any authorized representative of employees, who believes that he has been discriminated against by any person in violation of § 865.11(a) of this part may file an application for review. For the purpose of these regulations, an application for review means the presentation of a written report of discrimination stating the reasons why the person believes he has been discriminated against and the facts surrounding the alleged discrimination.

(b) *Where to file.* The employee or representative may file the application for review at any location of the Office and each office shall maintain a log of all filing.

(c) *Time for filing.* The employee or representative shall file an application for review within 30 days after the alleged discrimination occurs. An application is considered filed—

(1) On the date delivered if delivered a person to the Office, or

(2) On the date mailed to the Office.

(d) *Running of the time of filing.* The time for filing begins when the employee knows or has reason to know of the alleged discriminatory activity.

§ 865.13 Investigation and conference procedures.

(a) Within 7 days after receipt of any application for review, the Office shall mail a copy of the application for review to the person alleged to have caused the discrimination, shall file the application for review with the Office of Hearings and Appeals and shall notify the employee and the alleged discriminating person that the Office will investigate the complaint. The alleged discriminating person may file a response to the application for review within 10 days after he receives the copy of the application for review. The response shall specifically admit, deny or explain each of the facts alleged in the application unless the alleged discriminating person is without knowledge in which case he shall so state.

(b) The Office shall initiate an investigation of the alleged discrimination with 30 days after receipt of the application for review. The Office shall complete the investigation with 60 days of the date of the receipt of the application for review. If circumstances surrounding the investigation prevent completion within the 60-day period, the Office shall notify the person who filed the application for review and the alleged discriminating person of the delay, the reason for the delay, and the expected completion date for the investigation.

(c) Within 7 days after completion of the investigation the Office shall invite the parties to an informal conference to discuss the findings and preliminary conclusions of the investigation. The purpose of the informal conference is to attempt to conciliate the matter. If a complaint is resovled at an informal conference, the terms of the agreement will be recorded in a written document that will be signed by the alleged discriminating person, the employee and the representative of the Office. If the Office concludes on the basis of a subsequent investigation that any party to the agreement has failed in any material respect to comply with the terms of any agreement reached during an informal conference, the Office shall take appropriate action to obtain compliance with the agreement.

(d) Following the investigation and any informal conference held, the Office shall complete a report of investigation which shall include a summary of the results of the conference. Copies of this report shall be available to the parties in the case.

§ 865.14 Request for hearing.

(a) If the Office determines that a violation of this part has probably occurred and was not resolved at an informal conference, the Director shall request a hearing on the employee's behalf before the Office of Hearings and Appeals within 10 days of the scheduled informal hearing. the parties shall be notified of the detemination. If the Director declines to request a hearing the employee shall be notified within 10 days of the scheduled informal conference and informed of his right to request a hearing on his own behalf.

(b) The employee may request a hearing with the Office of Hearings and Appeals after 60 days have elapsed from the filing of his application.

§ 865.15 Formal adjudicatory proceedings.

(a) Formal adjudication of a complaint filed under this part shall be conducted in the Office of Hearings and Appeals under 43 CFR Part 4.

(b) A hearing shall be held as promptly as possible consistent with the opportunity for discovery provided for under 43 CFR Part 4.

(c) Upon a finding of violation of § 865.11 of this part, the Secretary shall order the appropriate affirmative relief including, but not limited to, the rehiring or reinstatement of the employee or representative of employees to his former position with compensation. At the request of the employee a sum equal to the aggregate amount of all costs and expenses including attorneys' fees which have been reasonably incurred by the employee for, or in connection with, the institution and prosecution of the proceedings shall be assessed against the person committing the violation.

(d) On or after 10 days after filing an application for review under this part the Secretary or the employee may seek temporary relief in the Office of Hearings and Appeals under 43 CFR Part 4.

SUBCHAPTER R—ABANDONED MINE LAND RECLAMATION

PART 870—ABANDONED MINE RECLAMATION FUND—FEE COLLECTION AND COAL PRODUCTION REPORTING

Sec.
870.1 Scope.
870.5 Definitions.
870.10 Information collection.
870.11 Applicability.
870.12 Reclamation fee.
870.13 Fee computations.
870.14 Determination of percentage-based fees.
870.15 Reclamation fee payment.
870.16 Production records.
870.17 Compliance authority.

AUTHORITY: Secs. 201, 402, and 412, Pub. L. 95-87, 91 Stat. 445, 457, and 446 (30 U.S.C. 1211, 1232, and 1242).

SOURCE: 47 FR 28593, June 30, 1982, unless otherwise noted.

§ 870.1 Scope.

This part sets out the procedures for the collection of fees for the Abandoned Mine Reclamation Fund.

§ 870.5 Definitions.

As used in Part 870 through 888 of this subchapter—

Abandoned Mine Reclamation Fund or *Fund* means a special fund established on the books of the U.S. Treasury for the purpose of accumulating revenues designated for reclamation of abandoned mine lands and other activities authorized by Title IV of the Act.

Agency means the State agency designated by the Governor to administer the State reclamation program to receive and administer grants under this part.

Allocate means the administrative identification in the records of OSM of moneys in the fund for a specific purpose, e.g., identification of moneys for exclusive use by a State.

Anthracite, bituminous and subbituminous coal means all coals other than lignite coal.

Calendar quarter means a 3-month period within a calendar year. The first calendar quarter begins on January 1 of the calendar year and ends on the last day of March. The second calendar quarter begins on the first day of April and ends on the last day of June. The third calendar quarter begins on the first day of July and ends on the last day of September. The fourth calendar quarter begins on the first day of October and ends on the last day of December.

Eligible lands and water means land and water eligible for reclamation or drainage abatement expenditures which were mined for coal or which were affected by such mining, wastebanks, coal processing, or other coal mining processes, and abandoned or left in an inadequate reclamation status prior to August 3, 1977, and for which there is no continuing reclamation responsibility under State or Federal law other than the Act.

Emergency means a sudden danger or impairment that presents a high probability of substantial physical harm to the health, safety, or general welfare of people before the danger can be abated under normal program operation procedures.

Expended means that moneys have been obligated, encumbered, or committed for reclamation by contract by the OSM, State, or Tribe for work to be accomplished or services to be rendered.

Extreme danger means a condition that could reasonably be expected to cause substantial physical harm to persons, property, or the environment and to which persons or improvements on real property are currently exposed.

Fee compliance officer means any person authorized by the Secretary to exercise authority in matters relating to this part.

In situ coal mining means activities conducted on the surface or underground in connection with in-place distillation, retorting, leaching or other chemical or physical processing of coal. The term includes, but is not limited to, in situ gasification, in situ leaching, slurry mining, solution mining, bore hole mining, and fluid recovery mining. At this time, Part 870 considers only in situ gasification.

Indian Abandoned Mine Reclamation Fund or *Indian Fund* means a separate fund established by an Indian tribe for the purpose of accounting for moneys granted by the Director under an approved Indian Reclamation Program and other moneys authorized by these regulations to be deposited in the Indian Fund.

Indian reclamation program means a program established by an Indian tribe in accordance with this chapter for reclamation of lands and water adversely affected by past mining, including the reclamation plan and annual applications for grants under the plan.

Left or abandoned in either an unreclaimed or inadequately reclaimed condition means lands and water—

(a) Which were mined or which were affected by such mining, wastebanks, processing, or other mining processes prior to August 3, 1977, and on which all mining has ceased;

(b) Which continue, in their present condition, to substantially degrade the quality of the environment, prevent or damage the beneficial use of land or water resources, or endanger the health and safety of the public; and

(c) For which there is no continuing reclamation responsibility under State or Federal laws.

Lignite coal means consolidated lignite coal having less than 8,300 British thermal units per pound, moist and mineral-matter-free. Moist, mineral-matter free British thermal units per pound are determined by Parr's formula, equation 3, on page 222 of "Standard Specification for Classification of Coals by Rank," in American Society for Testing and Materials ASTM D 388-77 (Philadelphia, 1977). Parr's formula follows:

Moist, Mn-Free Btu =
$(Bu - 50S)/[100 - (1.08A + 0.55S)] \times 100$
where:
Mn = Mineral matter
(Btu = British thermal units per pound (calorific value)
A = percentage of ash, and
S = percentage of sulfur

"Moist" refers to coal containing its natural inherent or bed moisture, but not including water adhering to the surface of the coal.

OSM means the Office of Surface Mining Reclamation and Enforcement.

Permanent facility means any structure that is built, installed or established to serve a particular purpose or any manipulation or modification of the surface that is designed to remain after the reclamation activity is completed, such as a relocated stream channel or diversion ditch.

Project means a delineated area containing one or more abandoned mine land problems. A project may be a group of related reclamation activities with a common objective within a political subdivision of a State or within a logical, geographically defined area, such as a watershed, conservation district, or county planning area.

Reclaimed coal means coal recovered from a deposit that is not in its original geological location, such as refuse piles or culm banks or retaining dams and ponds that are or have been used during the mining or preparation process, and stream coal deposits. Reclaimed coal operations are considered to be surface coal mining operations for fee liability and calculation purposes.

Reclamation activity means the reclamation, abatement, control, or prevention of adverse effects of past mining.

Reclamation plan means a plan submitted and approved under Part 884 of this chapter.

State Abandoned Mine Reclamation Fund or *State Fund* means a separate fund established by a State for the purpose of accounting for moneys granted by the Director under an approved State Reclamation Program and other moneys authorized by these regulations to be deposited in the State Fund.

State reclamation program means a program established by a State in accordance with this chapter for reclamation of lands and water adversely affected by past mining, including the reclamation plan and annual applications for grants.

Surface coal mining means the extraction of coal from the earth by removing the materals over the coal seam before recovering the coal and includes auger coal mining. For purposes of subchapter R, reclaiming coal operations are considered surface coal mining.

Ton means 2,000 pounds avoirdupois (0.90718 metric ton).

Underground coal mining means the extraction of coal from the earth by developing entries from the surface to the coal seam before recovering the coal by underground extraction methods, and includes in situ mining.

Value means gross value at the time of initial bona fide sale, transfer of ownership, or use by the operator, but does not include the reclamation fee required by this part.

§ 870.10 Information collection.

The information required by Part 870 of this chapter is being collected to meet the mandate of Section 402 of the Act, which requires the Secretary to collect a reclamation fee from coal mining operations. The information collection requirements contained in §§ 870.12(c), 870.15 (b) and (c) and 870.16 (a) and (d) were approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned clearance number 1029-0063. This information will be used by the regulatory authority to determine whether coal mine operators are reporting accurate production figures and paying proper fees. The obligation to respond is mandatory.

§ 870.11 Applicability.

The regulations in this Part apply to all surface and underground coal mining operations except—

(a) The extraction of coal by a landowner for his own noncommercial use from land owned or leased by him;

(b) The extraction of coal for commercial purposes by surface coal mining operations which affects two acres or less during the life of the mine;

(c) The extraction of coal as an incidental part of Federal, State, or local government-financed highway or other construction;

(d) The extraction of coal incidental to the extraction of other minerals where coal does not exceed 16⅔ percent of the mineral tonnage removed for commercial use or sale in any twelve consecutive months; and

(e) The extraction of less than 250 tons of coal within twelve consecutive months.

§ 870.12 Reclamation fee.

(a) The operator shall pay a reclamation fee on each ton of coal produced for sale, transfer, or use, including the products of in situ mining.

(b) The fee shall be determined by the weight and value at the time of initial bona fide sale, transfer of ownership, or use by the operator.

(1) The initial bona fide sale, transfer of ownership, or use shall be determined by the first transaction or use of the coal by the operator immediately after it is severed, or removed from a reclaimed coal refuse deposit.

(2) The value of the coal shall be determined F.O.B. mine.

(3) The weight of each ton shall be determined by the actual gross weight of the coal.

(i) Impurities, including water, that *have not* been removed prior to the time of initial bona fide sale, transfer of ownership, or use by the operator *shall not* be deducted from the gross weight.

(ii) Operators selling coal on a clean coal basis shall retain records that show run-of-mine tonnage, and the basis for the clean coal transaction.

(iii) Insufficient records shall subject the operator to fees based on raw tonnage data.

(c) If the operator combines surface mined coal, including reclaimed coal, with underground mined coal before the coal is weighed for fee purposes, the higher reclamation fee shall apply, unless the operator can substantiate the amount of coal produced by surface mining by acceptable engineering calculations or other reports which the Director may require.

§ 870.13 Fee computations.

(a) *Surface mining fees.* The fee for anthracite, bituminous, and subbituminous coal, including reclaimed coal, is 35 cents per ton unless the value of such coal is less than $3.50 per ton, in which case the fee is 10 percent of the value.

(b) *Underground mining fees.* The fee for anthracite, bituminous, and subbituminous coal is 15 cents per ton unless the value of such coal is less than $1.50 per ton, in which case the fee is 10 percent of the value.

(c) *Surface and underground mining fees for lignite coal.* The fee for lignite coal is 10 cents per ton unless the value of such coal is less than $5.00 per ton, in which case the fee charged is 2 percent of the value.

(d) *In situ coal mining fees.* The fee for in situ mined coal, except lignite coal, is 15 cents per ton based on Btu's per ton in place equated to the gas produced at the site as certified through analysis by an independent laboratory. The fee for in situ mined lignite is 10 cents per ton based on the Btu's per ton of coal in place equated to the gas produced at the site as certified through analysis by an independent laboratory.

§ 870.14 Determination of percentage-based fees.

(a) If the operator submits a fee based on a percentage of the value of coal, the operator shall include, with his fee and production report, documentation supporting the alleged coal value. Based on this information and any additional documentation; including examination of the operator's books and records, that the Director may require, the Director may accept the valuation submitted by the operator, or may otherwise determine the value of the coal.

(b) If the Director determines that a higher fee shall be paid, the operator shall submit the additional fee together with interest computed under § 870.15(c).

§ 870.15 Reclamation fee payment.

(a) Each operator shall pay the reclamation fee based on calendar quarter tonnage no later than thirty days after the end of each calendar quarter.

(b) Each operator shall use mine report form OSM-1 (or OSM-1A approved by OSM) to report tonnage of coal sold, used, or ownership transferred during the applicable calendar quarter.

(c) As of April 1, 1983, delinquent reclamation fee payments are subject to interest at the rate established quarterly by the U.S. Department of the Treasury for use in applying late charges on late payments to the Federal Government, pursuant to Treasury Fiscal Requirements Manual 6-8020.20. The Treasury current value of funds rate is published by the Fiscal Service in the Notices section of the FEDERAL REGISTER. Interest on unpaid reclamation fees shall begin to accure on the 31st day following the end of the calendar quarter for which the fee payment is owed and will run until the date of payment. OSM will bill delinquent operators on a monthly basis and initiate whatever action is necessary to secure full payment of all fees and interest. All operators who receive a Coal Production and Reclamation Fee Report (Form OSM-1), including those with zero production, must submit a completed Form OSM-1, as well as any fee payment due. Fee payments postmarked later than thirty days after the calendar quarter for which the fee was owed will be subject to interest.

(d) An operator who owes total quarterly reclamation fees of $100,000 or more for one or more mines must use the Treasury Financial Communications System, forward its payments by electronic transfer, and use OSM's approved form(s) to report production to the Denver address below. An operator who owes less than $100,000 quarterly reclamation fees for one or more mines may forward payments by electric transfer, or must submit a check or money order payable to Office of Surface Mining, in the same envelope with OSM's approved form(s) to: Office of Surface Mining Reclamation and Enforcement, U.S. Department of Interior, P.O. Box 25065—DFC, Denver, Colorado 80225.

(e) Failure to pay overdue reclamation fees, including interest on late payments or underpayments, failure to maintain adequate records, or failure to provide access to records of a surface coal mining operation may result in one or more of the following actions: (1) Initiation of litigation; (2) reporting to the Internal Revenue Service; (3) reporting to State agencies responsible for taxation; (4) reporting to credit bureaus; or (5) referral to collection agencies. Such remedies are not exclusive.

(f) When a reclamation fee debt is greater than 91 days overdue, a 6 percent per annum penalty shall begin to accure on the amount owed for fees and will run until the date of payment. This penalty is in addition to the interest described in paragraph (c) of this section.

(g)(1) For all delinquent fees, interest and any penalties, the debtor will be required to pay a processing and handling charge which shall be based upon the following components:

(i) For debts referred to a collection agency, the amount charged to OSM by the collection agency;

(ii) For debts processed and handled by OSM, a standard amount set annually by OSM based upon similar charges by collection agencies for debt collection;

(iii) For debts referred to the Solicitor, Department of the Interior, but paid prior to litigation, the estimated average cost to prepare the case for litigation as of the time of payment;

(iv) For debts referred to the Solicitor, Department of the Interior, and litigated, the estimated cost to prepare and litigate a debt case as of the time of payment; and

(v) If not otherwise provided for, all other administrative expenses associated with collection, including, but not limited to, billing, recording payments, and follow-up actions.

(2) No prejudgment interest accrues on any processing and handling charges.

(Pub. L. 95-87, 30 U.S.C. 1201 *et seq.*; Pub. L. 97-365, 5 U.S.C. 5514 *et seq.*)

[47 FR 28593, June 30, 1982, as amended at 48 FR 11100, Mar. 15, 1983; 49 FR 27499, July 5, 1984]

§ 870.16 Production records.

(a) Any person engaging in or conducting a surface coal mining operation shall maintain, on a current basis, records that contain at least the following information:

(1) Tons of coal produced, bought, sold or transferred, amount received per ton, name of person to whom sold or transferred, and the date of each sale or transfer.

(2) Tons of coal used by the operator and date of consumption.

(3) Tons of coal stockpiled or inventoried which are not classified as sold for fee computation purposes under § 870.12.

(4) For in situ coal mining operations, total BTU value of gas produced, the BTU value of a ton of coal in place certified at least semiannually by an independent laboratory, and the amount received for gas sold, transferred, or used.

(b) OSM fee compliance officers and other authorized representatives shall have access to records of any surface coal mining operation for the purpose of determining compliance of that or any other such operation with this part.

(c) Any person engaging in or conducting a surface coal mining operation shall make available any book or record necessary to substantiate the accuracy of reclamation fee reports and payments at reasonable times for inspection and copying by OSM fee compliance officers. If the fee is paid at the maximum rate, the fee compliance officers shall not copy information relative to price. All copied information shall be protected to the extent authorized or required by the Privacy Act and the Freedom of Information Act (5 U.S.C. 552 (a), (b)).

(d) Any persons engaging in or conducting a surface coal mining operation shall maintain books and records for a period of 6 years from the end of the calendar quarter in which the fee was due or paid, whichever is later.

(e)(1) If an operator of a surface coal mining operation fails to maintain or make available the records as required in this section, OSM shall make an estimate of fee liability under this part through use of average production figures based upon the nature and acreage of the coal mining operation in question, then assess the fee at the amount estimated to be due, plus a 20 percent upward adjustment for possible error.

(2) Following an OSM estimate of fee liability, an operator may request OSM to revise the estimate based upon information provided by the operator. The operator has the burden of demonstrating that the estimate is incorrect by providing documentation

acceptable to OSM, and comparable to information required in § 870.16(a).

(Pub. L. 95-87, 30 U.S.C. 1201 *et seq.*; Pub. L. 97-365, 5 U.S.C. 5514 *et seq.*).

[49 FR 27500, July 5, 1984]

§ 870.17 Compliance authority.

(a) Fee Compliance Officers shall have the authority to examine records of the second party involved in the sale or transfer of ownership of coal by the operator.

(b) Fee Compliance Officers shall have the authority to examine the records of any party selling coal to the operator.

PART 872—ABANDONED MINE RECLAMATION FUNDS

Sec.
872.1 Scope.
872.10 Information collection.
872.11 Abandoned Mine Reclamation Fund.
872.12 State/Indian Abandoned Mine Reclamation Funds.

AUTHORITY: Secs. 102(g), 201(c), 401, 402(g), and 412, Pub. L. 95-87, 91 Stat. 449, 456, 458, and 466 (30 U.S.C. 1211, 1231, 1232, and 1242).

SOURCE: 47 FR 28595, June 30, 1982, unless otherwise noted.

§ 872.1 Scope.

This part sets forth general responsibilities for administration of Abandoned Mine Land Reclamation Programs and procedures for management of the Abandoned Mine Reclamation Funds to finance such programs.

§ 872.10 Information collection.

The information required by Part 872 is being collected to meet the mandate of Sections 401 and 402 of the Act, which require that the Secretary make a determination regarding the use of allocated State funds which have not been expended in three years. The information collection requirements contained in § 872.11 (b)(2) and (b)(3) were approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned clearance number 1029-0054. This information will be used by the regulatory authority to determine whether delays by State/Indian tribes in use of allocated and granted funds were due to unavoidable delays in program approval. The obligation to respond is mandatory.

§ 872.11 Abandoned Mine Reclamation Fund.

(a) Revenue to the Fund shall include—

(1) Reclamation fees collected under section 402 of the Act and Part 870 of this chapter;

(2) Amounts collected by OSM from charges for use of land acquired or reclaimed with moneys from the Fund under Part 879 of this chapter;

(3) Moneys recovered by OSM through satisfaction of liens filed against privately owned lands reclaimed with moneys from the Fund under Part 882 of this chapter;

(4) Moneys recovered by OSM from the sale of lands acquired with moneys from the Fund or by donation; and

(5) Moneys donated to OSM for the purpose of abandoned mine land reclamation.

(b) Moneys deposited in Fund and appropriated by the Congress shall be used for the following purposes:

(1) An amount not exceeding 10 percent of the reclamation fees collected each quarter, up to a maximum of $10,000,000 each year, shall be used to finance the Small Operator Assistance Program under Part 795 of this chapter.

(2) An amount equal to 50 percent of the reclamation fees collected from within a State shall be allocated at the end of the fiscal year in which they are collected for use in that State under an approved State Reclamation Plan. Reclamation fees collected from Indian lands shall not be included in the calculation of amounts to be allocated to a State. If a State advises OSM in writing that it does not intend to submit a State reclamation plan, no moneys shall be allocated to that State. Amounts allocated to a State that have not been granted to the State within 3 years from the date of allocation shall be available to the Director for other purposes under paragraph (b)(5) of this section. Amounts allocated and granted to the State

that have not been expended within 3 years from the date of allocation may be withdrawn from the State if the Director finds in writing—

(i) That the amounts involved are not necessary to carry out the approved reclamation activities; or

(ii) That failure to expend is a result of avoidable delays in conducting approved reclamation activities: *Provided, however,* That amounts allocated to a State and subject to withdrawal because they are not expended in 3 years will not be withdrawn from the State if the State has made reasonable efforts to expend the funds but was unable to do so because of unavoidable delays in program approval.

(3) An amount equal to 50 percent of the reclamation fees collected from Indian lands shall be allocated to the Indian tribe having an interest in those lands at the end of the fiscal year in which they are collected for use by that tribe under an approved Indian reclamation plan. If an Indian tribe advises OSM in writing that it does not intend to submit an Indian reclamation plan, no moneys shall be allocated to that tribe. Amounts allocated to Indian tribes that have not been granted to the Indian tribes within 3 years from the date of allocation shall be available to the Director for other purposes under paragraph (b)(5) of this section. Amounts allocated and granted to the Indian tribe that have not been expended within 3 years from the date of allocation may be withdrawn from the Indian tribe if the Director finds in writing—

(i) That the amounts involved are not necessary to carry out the approved reclamation activities; or

(ii) That failure to expend is a result of avoidable delays in conducting approved reclamation activities: *Provided, however,* That amounts allocated to an Indian tribe and subject to withdrawal because they are not expended in 3 years will be reallocated to the tribe if the tribe has made reasonable efforts to expend the funds but was unable to do so because of unavoidable delays in program approval.

(4) An amount not exceeding 20 percent of the moneys deposited in the Fund annually may be transferred to the Secretary of Agriculture to carry out the Rural Abandoned Mine program.

(5) All amounts not used for the above purposes shall be available to the Director for the purposes outlined in section 401(c) of the Act.

(c) Money deposited in State or Indian Abandoned Mine Reclamation Funds shall be used to carry out the reclamation plan approved under Part 884 of this chapter and projects approved under Part 888 of this chapter.

§ 872.12 State/Indian Abandoned Mine Reclamation Funds.

(a) Accounts to be known as State or Indian Abandoned Mine Reclamation Funds shall be established in each State or Indian tribal government with approved reclamation plans. These funds will be managed in accordance with the Office of Management and Budget Circular A-102.

(b) Revenue shall include—

(1) Amounts granted by the OSM for purposes of conducting the approved State reclamation plan;

(2) Moneys collected from charges for uses of land acquired or reclaimed with moneys from the State Fund under Part 879 of this chapter;

(3) Moneys recovered through the satisfaction of liens filed against privately owned lands;

(4) Moneys recovered by the State from the sale of lands acquired under Title IV of the Act; and

(5) Such other moneys as the State decides should be deposited in the Fund for use in carrying out the approved reclamation programs.

PART 874—GENERAL RECLAMATION REQUIREMENTS

Sec.
874.1 Scope.
874.11 Applicability.
874.12 Eligible coal lands and water.
874.13 Reclamation objectives and priorities.

AUTHORITY: Secs. 201(c), 403, 404, 409, and 412(c), Pub. L. 95-87, 91 Stat. 449, 458, 459, 465, and 466 (30 U.S.C. 1211, 1233, 1234, 1239, and 1242).

SOURCE: 47 FR 28596, June 30, 1982, unless otherwise noted.

§ 874.1 Scope.

This part establishes land and water eligibility requirements and reclamation objectives and priorities.

§ 874.11 Applicability.

The provisions of this part apply to all reclamation projects carried out with money from the Fund and administered by OSM and to the Rural Abandoned Mine Program administered by the Secretary of Agriculture under section 406 of the Act (30 U.S.C. 1236).

§ 874.12 Eligible coal lands and water.

Coal lands and water are eligible for reclamation activities if—

(a) They were mined for coal or affected by coal mining processes;

(b) They were mined prior to August 3, 1977, and left or abandoned in either an unreclaimed or inadequately reclaimed condition; and

(c) There is no continuing responsibility for reclamation by the operator, permittee, or agent of the permittee under statutes of the State or Federal government, or as a result of bond forfeiture. Bond forfeiture will render lands or water ineligible only if the amount forfeited is sufficient to pay the total cost of the necessary reclamation. In cases where the forfeited bond is insufficient to pay the total cost of reclamation, additional moneys from the Fund may be sought under Parts 886 or 888 of this chapter.

§ 874.13 Reclamation objectives and priorities.

Reclamation projects shall reflect the priorities set out in section 403 of the Act (30 U.S.C. 1233) and should be accomplished in accordance with OSM's "Final Guidelines for Reclamation Programs and Projects" (45 FR 14810-14819, March 6, 1980).

PART 875—NONCOAL RECLAMATION

Sec.
875.1 Scope.
875.11 Applicability.
875.12 Eligible lands and water.
875.13 Requirements for noncoal reclamation.

AUTHORITY: Secs. 409 and 412, Pub. L. 95-87, 91 Stat. 465 and 466 (30 U.S.C. 1239 and 1242).

SOURCE: 47 FR 28596, June 30, 1982, unless otherwise noted.

§ 875.1 Scope.

This part establishes land and water eligibility requirements and for noncoal reclamation.

§ 875.11 Applicability.

The provisions of this part apply to all reclamation projects on lands or water mined or affected by mining of minerals and materials other than coal and are to be carried out with money from the Fund and administered by a State or Indian tribe under an approved reclamation program according to Part 884 of this chapter.

§ 875.12 Eligible lands and water.

Noncoal lands and water are eligible for reclamation if—

(a) They were mined or affected by mining processes;

(b) They were mined prior to August 3, 1977, and left or abandoned in either an unreclaimed or inadequately reclaimed condition;

(c) There is no continuing responsibility for reclamation by the operator, permittee, or agent of the permittee under statutes of the State or Federal Government or the State as a result of bond forfeiture, which will render lands or water ineligible only if the amount forfeited is sufficient to pay the total cost of the necessary reclamation or, in cases where the forfeited bond is insufficient to pay the total cost of reclamation, additional moneys from the Fund may be sought under Parts 886 or 888 of this chapter;

(d) The reclamation has been requested by the Governor of the State or head of the tribal body;

(e) The reclamation is necessary for the protection of the public health and safety or all coal related reclamation has been accomplished; and

(f) Moneys allocated to the State or Indian tribe under § 872.11(b) (2) and (3) of this chapter are available for the work.

§ 875.13 Requirements for noncoal reclamation.

Reclamation of eligible noncoal mined lands and waters shall comply with the provisions of section 409 of Pub. L. 95-87 (30 U.S.C. 1239).

PART 877—RIGHTS OF ENTRY

Sec.
877.1 Scope.
877.10 Information collection.
877.11 Written consent for entry.
877.13 Entry and consent to reclaim.
877.14 Entry for emergency reclamation.

AUTHORITY: Secs. 201(c), 407 (a) and (b), 410, and 412(a), Pub. L. 95-87, 91 Stat. 449, 462, 463, and 466 (30 U.S.C. 1211, 1237, 1240, and 1242).

SOURCE: 47 FR 28597, June 30, 1982, unless otherwise noted.

§ 877.1 Scope.

This part establishes procedures for entry upon lands or property by OSM, States, and Indian tribes for reclamation purposes.

§ 877.10 Information collection.

The information collection requirements contained in §§ 877.11 and 877.13(b) were approved by the Office of Management and Budget (OMB) under 44 U.S.C. 3507 and assigned clearance number 1029-0055. This information is being collected to meet the mandate of section 407 of the Act, which provides that States or Indian tribes, pursuant to an approved reclamation program, may use the police power, if necessary, to effect entry upon private lands to conduct reclamation activities or exploratory studies if the landowner's consent is refused or the landowner is not available.

This information will be used by the regulatory authority to ensure that the State/Indian tribe has sufficient programmatic capability to conduct reclamation activities on private lands. The obligation to respond is mandatory.

§ 877.11 Written consent for entry.

Written consent from the owner of record and lessee, or their authorized agents, is the preferred means for obtaining agreements to enter lands in order to carry out reclamation activities. Nonconsensual entry by exercise of the police power will be undertaken only after reasonable efforts have been made to obtain written consent.

§ 877.13 Entry and consent to reclaim.

(a) OSM, the State, or Indian tribe or its agents, employees, or contractors may enter upon land to perform reclamation activities or conduct studies or exploratory work to determine the existence of the adverse effects of past coal mining if consent from the owner is obtained.

(b) If consent is not obtained, then, prior to entry under this section, the OSM, State, or Indian tribe shall find in writing, with supporting reasons that—

(1) Land or water resources have been or may be adversely affected by past coal mining practices;

(2) The adverse effects are at a state where, in the interest of the public health, safety, or the general welfare, action to restore, reclaim, abate, control, or prevent should be taken; and

(3) The owner of the land or water resources where entry must be made to restore, reclaim, abate, control, or prevent the adverse effects of past coal mining practices is not known or readily available, or the owner will not give permission for OSM, State, or Indian tribe or its agents, employees, or contractors to enter upon such property to restore, reclaim, abate, control, or prevent the effects of past coal mining practices.

(c) If consent is not obtained, OSM, State, or Indian tribe shall give notice of its intent to enter for purposes of conducting reclamation at least 30 days before entry upon the property. The notice shall be in writing and shall be mailed, return receipt requested, to the owner, if known, with a copy of the findings required by this section. If the owner is not known, or if the current mailing address of the owner is not known, notice shall be posted in one or more places on the property to be entered where it is readily visible to the public and advertised once in a newspaper of general circulation in the locality in which the land is located. The notice posted on the property and advertised in the newspaper shall include a statement of where the findings required by this section may be inspected or obtained.

§ 877.11 Entry for emergency reclamation.

(a) OSM, its agents, employees, or contractors shall have the right to enter upon any land where an emergency exists and on any other land to have access to the land where the emergency exists to restore, reclaim, abate, control, or prevent the adverse effects of coal mining practices and to do all things necessary to protect the public health, safety, or general welfare.

(b) Prior to entry under this section, OSM shall make a written finding with supporting reasons that the situation qualifies as an emergency in accordance with the requirements set out in section 410 of the Act.

(c) Notice to the owner shall not be required prior to entry for emergency reclamation. OSM shall make reasonable efforts to notify the owner and obtain consent prior to entry, consistent with the emergency conditions that exist. Written notice shall be given to the owner as soon after entry as practical in accordance with the requirements set out in § 877.13(c) of this chapter.

PART 879—ACQUISITION, MANAGEMENT, AND DISPOSITION OF LANDS AND WATER

Sec.

879.1 Scope.
879.10 Information collection.
879.11 Land eligible for acquisition.
879.12 Procedures for acquisition.
879.13 Acceptance of gifts of land.
879.14 Management of acquired land.
879.15 Disposition of reclaimed land.

AUTHORITY: Secs. 201(c), 407 (c), (d), (e), (f), (g), and (h) and 412 (a), Pub. L. 95-87, 91 Stat. 449, 463, 464, and 466 (30 U.S.C. 1211, 1237, and 1247).

SOURCE: 47 FR 28597, June 30, 1982, unless otherwise noted.

§ 879.1 Scope.

This part establishes procedures for acquisition of eligible land and water resources for emergency abatement activities and reclamation purposes by OSM or a State or Indian tribe under an approved reclamation program. It also provides for the management and disposition of lands acquired by the OSM, State, or Indian tribe and establishes requirements for the redeposit of proceeds from the use or sale of land.

§ 879.10 Information collection.

The information collection requirements contained in §§ 879.11(b)(1), (b)(2), and (e)(3), 879.12(a), 879.13(b), and 879.15(a) and (b) were approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned clearance number 1029-0056. This information is being collected to meet the mandate of section 407 of the Act, which requires that a State/Indian tribe include in its reclamation plan assurances that the acquisition, management, and disposition of eligible lands and water for reclamation and other designated purposes will be accomplished in a manner prescribed by the Act. This information will be used by the regulatory authority to ensure that the State/Indian tribe has sufficient programmatic capability to acquire, manage, and dispose of land in the prescribed manner. The obligation to respond is mandatory.

§ 879.11 Land eligible for acquisition.

(a) Land adversely affected by past coal mining practices may be acquired by the OSM with moneys from the Fund, or by a State or Indian tribe if approved in advance by OSM. OSM shall find in writing that acquisition is necessary for successful reclamation and that—

(1) The acquired land will serve recreation, historic, conservation, and reclamation purposes or provide open space benefits after restoration, reclamation, abatement, control, or prevention of the adverse effects of past coal mining practices; and

(2) Permanent facilities will be constructed on the land for the restoration, reclamation, abatement, control, or prevention of the adverse effects of past coal mining practices.

(b)(1) Coal refuse disposal sites and all coal refuse thereon may be acquired with moneys from the Fund by OSM or by a State or Indian tribe if approved in advance by OSM. Prior to the approval of the acquisition of such sites, the OSM, State, or Indian tribe shall find in writing that the acquisition of such land is necessary for successful reclamation and will serve the purposes of the Abandoned Mine Land Reclamation Program.

(2) Where an emergency situation exists and a written finding as set out in § 877.14 of this chapter has been made, OSM may use Fund moneys to acquire lands where public ownership is necessary to meet an emergency situation and prevent recurrence of the adverse effects of past coal mining practices.

(c) Land adversely affected by past coal mining practices may be acquired by OSM if the acquisition with moneys from the Fund is an integral and necessary element of an economically feasible plan or project to construct or rehabilitate housing which meets the specific requirements set out in section 407(h) of the Act.

(d) Land or interests in land needed to fill voids, seal abandoned tunnels, shafts, and entryways or reclaim surface impacts of underground or surface mines may be acquired by the OSM, State, or Indian tribe if OSM finds that acquisition is necessary under Part 875 of this chapter.

(e) The OSM, State, or Indian tribe which acquires land under this part shall acquire only such interests in the land as are necessary for the reclamation work planned or the postreclamation use of the land. Interests in improvements on the land, mineral rights, or associated water rights may be acquired if—

(1) The customary practices and laws of the State in which the land is located will not allow severance of such interests from the surface estate; or

(2) Such interests are necessary for the reclamation work planned or for the postreclamation use of the land; and

(3) Adequate written assurances cannot be obtained from the owner of the severed interest that future use will not be in conflict with the reclamation to be accomplished.

§ 879.12 Procedures for acquisition.

(a) An appraisal of all land or interest in land to be acquired shall be obtained by the OSM, State, or Indian tribe. The appraisal shall state the fair market value of the land as adversely affected by past mining.

(b) When practical, acquisition shall be by purchase from a willing seller. The amount paid for land or interests in land acquired shall reflect the fair market value of the land or interests in land as adversely affected by past mining.

(c) When necessary, land or interests in land may be acquired by condemnation. Condemnation procedures shall not be started until all reasonable efforts have been made to purchase the land or interests in lands from a willing seller.

(d) The OSM, State, or Indian tribe which acquires land under this part shall comply, at a minimum, with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 U.S.C. 4601, *et seq.*, and 41 CFR Part 114-50.

§ 879.13 Acceptance of gifts of land.

(a) The OSM, State, or Indian tribe under an approved reclamation plan may accept donations of title to land or interests in land if the land proposed for donation meets the requirements set out in § 879.11.

(b) Offers to make a gift of land or interest in land to the U.S. Government shall be in writing and comply with U.S. Department of the Interior regulations for land donations. The States and Indian tribes may use procedures provided by applicable State or Indian tribal law.

§ 879.14 Management of acquired land.

Land acquired under this part may be used for any lawful purpose that is consistent with the necessary reclamation activities. Procedures for collection of user charges or the waiver of such charges by the OSM, State, or Indian tribe shall provide that all user fees collected shall be deposited in the appropriate Abandoned Mine Reclamation Fund.

§ 879.15 Disposition of reclaimed land.

(a) Prior to the disposition of any land acquired under this part, OSM, State, or Indian tribe shall publish a notice of proposed land disposition, hold public hearings, if required, and make written findings in accordance with the authority contained in section 407(g)(2) of the Act.

(b) OSM may transfer administrative responsibility for land acquired by OSM to any Federal Department or Agency, with or without cost to that Department or Agency. OSM may transfer title for land acquired by OSM to any State or Indian tribe or to any agency or political subdivision of a State or Indian tribe, with or without cost to that entity, for the purposes set out in paragraphs (e) or (f) of this section. The agreement under which a transfer is made shall specify—

(1) The purposes for which the land may be used, which shall be consistent with the authorization under which the land was acquired; and

(2) That the title of administrative responsibility for the land shall revert to OSM, State, or Indian tribe if, at any time in the future, OSM finds that the land is not used for the purposes specified.

(c) OSM may accept title for abandoned and unreclaimed land to be reclaimed and administered by OSM. If a State or Indian tribe transfers land to OSM under this section, that State or Indian tribe shall have a preference right to purchase such land from OSM after reclamation is completed. The price to be paid by the State or Indian tribe shall be the fair market value of the land in its reclaimed condition less any portion of the land acquisition price paid by the State or Indian tribe.

(d) OSM may sell land acquired and reclaimed under this part, except that acquired for housing under § 879.11(c), to the State or local government at less than fair market value but in no case less than purchase price plus reclamation cost provided such land is used for a valid public purpose.

(e) OSM may transfer or sell land acquired for housing under § 879.11(c), with or without monetary consideration, to any State or political subdivision of a State, to an Indian tribe, or to any firm, association, or corporation. The conditions of transfer or sale shall be in accordance with Section 407(h) of the Act.

(f) OSM may transfer title for land acquired for housing under § 879.11(c) by grants or commitments for grants, or may advance money under such terms and conditions as required, to—

(1) Any State or Indian tribe; or

(2) A department, agency, or instrumentality of a State; or

(3) Any public body or nonprofit organization designated by a State.

(g)(1) OSM may sell or authorize the States or Indian tribes to sell land acquired under this part by public sale if—

(i) Such land is suitable for industrial, commercial, residential, or recreational development;

(ii) Such development is consistent with local, State, of Federal land use plans for the area in which the land is located; and

(iii) Retention by OSM, State, or Indian tribe, or disposal under other paragraphs of this section is not in the public interest.

(2) Disposal procedures will be in accordance with Section 407(g) of the Act and applicable State or Indian tribal requirements.

(3) States may transfer title or administrative responsibility for land to cities, municipalities, or quasi-governmental bodies, provided that the State provide for the reverter of the title or administrative responsibility if the land is no longer used for the purposes originally proposed.

(h) All moneys received from disposal of land under this part shall be deposited in the appropriate Abandoned Mine Reclamation Fund in accordance with 30 CFR Part 872 of this chapter.

PART 880—MINE FIRE CONTROL, APPALACHIA

Sec.

880.1 Scope.
880.2 Definitions.
880.3 Qualifications of projects.
880.4 Cooperative agreements.
880.5 Project contracts.
880.6 Administration of contributions.
880.7 Assistance by States and local authorities.
880.8 Civil rights.

AUTHORITY: Sec. 7, 68 Stat. 1011, sec. 205, 79 Stat. 13; 30 U.S.C. 557, 40 U.S.C. App. 205 and Pub. L. 95-87, 30 U.S.C. 1201 *et seq.*

SOURCE: 48 FR 37378, Aug. 18, 1983, unless otherwise noted.

§ 880.1 Scope.

Projects for the control or extinguishment of outcrop or underground fires in coal formations under the authority of the Act of August 31, 1954 (30 U.S.C. 551-558) and pursuant to subsection (a)(2) of section 205 of the Appalachian Regional Development Act of 1965 (Pub. L. 89-4, 79 Stat. 5), shall be instituted and conducted in accordance with the regulations in this part.

§ 880.2 Definitions.

As used in the regulations in this part and in cooperative agreements, entered into pursuant to the regulations in this part:

(a) "Government" means the United States of America;

(b) "Commission" means the Appalachian Regional Development Commission established by section 101 of the Appalachian Regional Development Act of 1965;

(c) "State" means any one of the States listed in section 403 of the Appalachian Regional Development Act of 1965; and

(d) "Local authorities" means a county, city, township, town, or borough, and other local governmental bodies organized and existing under authority of State laws.

§ 880.3 Qualifications of projects.

A project in a State for the control of fires in coal formations will be undertaken in cooperation with a State and local authorities if, in the Secretary's judgment, the project will prevent injury and loss of life, protect public health, conserve natural resources, or protect public and private property. Projects must be submitted by a State to the Commission and receive the approval of that body.

§ 880.4 Cooperative agreements.

(a) Each project shall be covered by a cooperative agreement among the Government, as represented by the Director, the State and the local authorities. The agreement shall establish the total estimated cost of the project and, if the project is to be accomplished in phases, the estimated cost of each phase. The maximum obligations of the parties to share the cost of the project shall be stated in terms of the total estimated cost of the project. Other responsibilities of the parties shall also be described in the agreement, as may be agreed and in conformity with the regulations in this part, to meet the needs and requirements of a particular project.

(b) Total project costs shall include the costs of the work performed pursuant to a project contract or a series of project contracts, and the costs to OSM of administration, engineering, planning, direction of the project work, and routine maintenance and inspection following completion of the work performed to control or extinguish the fire.

(c) The Government's obligation to contribute funds may be less than but shall not exceed 75 percent of the total estimated cost of the project. The obligation of the State (and, if appropriate, the local authorities) to contribute funds may be more but shall not be less than 25 percent of the total estimated cost of the project.

(d) None of the funds contributed by the Government or the State or the local authorities shall be used for the purchase of sand, clay, stone, or other such kinds of noncombustible materials used to control or extinguish the fire.

§ 880.5 Project contracts.

(a) OSM will design, plan, and engineer a method of operation for control or extinguishment of the outcrop or underground mine fire, and will execute the project through a project contract, or, if the work is to be done in phases, a series of project contracts.

(b) A State or local authority must pay the financial contribution required under the cooperative agreement to OSM after the bids on a proposed project contract have been opened but before the contract is awarded. The State will be advised of the time and place of the opening of bids on a proposed project contract and may have a representative present and, when requested, shall advise OSM with respect to the qualifications of bidders. OSM will recognize the contribution and cooperation of State and local authorities in advertisements for bids for the work.

(c) If the bids on work to be done under a proposed project contract exceed the estimated cost of that work, OSM shall not enter into a project contract until the cooperative agreement has been amended to provide for an increase in contributions sufficient to meet the increase in costs. Similarly, no amendment shall be made to, and no change order shall be issued under, a project contract, if the amendment or change order would result in an expenditure under the contract in excess of the estimated cost of the work until the cooperative agreement has been amended to provide for an increase in contributions sufficient to meet the increase in costs.

(d) The Director is authorized to execute an amendment to a cooperative agreement, without prior approval of the Secretary, to meet an increase in costs under a proposed or existing project contract if the increase is not in excess of 20 percent of the estimated cost of the work under the proposed or existing cooperative agreement.

§ 880.6 Administration of contributions.

Financial contributions made by a State or local authorities will be deposited in trust in the Treasury of the United States for withdrawal and expenditure by OSM pursuant to the cooperative agreement and as necessary in performance of the project work. Withdrawals and expenditures from the trust fund will be made only for costs connected with the project. Any part of the money contributed by a State or local authority for an individual project which remains unexpended at the completion or termination of project will be returned to the State or local authority.

§ 880.7 Assistance by States and local authorities.

Either the State or local authorities, as may be appropriate in each particular project, and without cost or charge to project costs shall:

(a) Provide such assistance in planning and engineering the project as may be requested by OSM;

(b) Furnish accurate information, data, and accurate maps on the location of the project and the location of water, sewer, and power lines within the project area, and maps or plats showing properties and lands on which releases, consents, or rights or interests in lands have been obtained;

(c) Obtain and deliver to OSM releases, proper consent or the necessary rights or interests in lands, and other documents required by OSM for approval of the project, and in form and substance satisfactory to OSM;

(d) Furnish a certification in form and substance satisfactory to OSM that the releases, consents, or the necessary rights or interests in lands, are from all the legal property owners within the project area;

(e) Agree to indemnify and hold the Government harmless should any property owner within the project area make any claim for damage resulting from the work within the project area if releases, consents or rights or interests were not obtained from such property owner by the State or local authorities;

(f) Grant to the Government the right to enter upon streets, roads, and other land owned or controlled by the State or the local authorities overlying or adjacent to the project fire area, and to conduct thereon the operations referred to in the cooperative agreement and project contract, and agree to hold the Government harmless from any claim for damage arising out of the project operations to property owned, possessed or controlled by the State or local authorities in the vicinity of the project area;

(g) Furnish sand, clay, stone, or other such kinds of noncombustible materials, used in the flushing of voids, installation of fire barriers, plugs, trenches, fills, or other means or methods used to control or extinguish the fire;

(h) Maintain and perform maintenance work on the project as may be provided in the cooperative agreement;

(i) Agree not to mine or permit mining of coal or other minerals on property owned or controlled by the State or local authorities, if required by OSM, to assure the success of, or protection to, the project work and the control or extinguishment of the fire, and for such period of time as may be required by OSM; and

(j) If necessary, procure the enactment of State or local laws providing for the control and extinguishment of outcrop and underground fires in coal formations on State or privately owned lands and the cooperation of the State or local authorities in the work and the requisite authority to permit the States or local authorities to meet the obligations imposed by the regulations in this part of a cooperative agreement.

§ 880.8 Civil rights.

State and local authorities shall comply with Title VI of the Civil Rights Act of 1964 (Pub. L. 88-352) and all requirements imposed by or pursuant to the regulations of the Department of the Interior entitled "Nondiscrimination in Federally-assisted Programs of the Department of the Interior-Effectuation of Title VI of the Civil Rights Act of 1964" (43 CFR Part 17) and shall give assurances of compliance in such form as may be required by the Director.

PART 881—SUBSIDENCE AND STRIP MINE REHABILITATION, APPALACHIA

Sec.
881.1 Purpose and scope.
881.2 Definitions.
881.3 Qualification of projects.
881.4 Application of contribution.
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881.7 Administration of contributions.
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881.11 Nondiscrimination.
881.12 Civil rights.

AUTHORITY: Sec. 205, 79 Stat. 13 (40 U.S.C. App. 205), and Pub. L. 95-87, 30 U.S.C. 1201 *et seq.*

SOURCE: 48 FR 37379, Aug. 18, 1983, unless otherwise noted.

§ 881.1 Purpose and scope.

The regulations in this part provide for contributions by the Secretary with respect to projects in the Appalachian Region for the sealing and filling of voids in abandoned coal mines or for the reclamation and rehabilitation of existing strip and surface mine areas under the authority of subsection (a)(1) of section 205 of the Appalachian Region Development Act of 1965 (Pub. L. 89-4, 79 Stat. 5)

§ 881.2 Definitions.

As used in the regulations in this part and in cooperative agreements entered into pursuant to the regulations in this part:

(a) "Government" means the United States of America;

(b) "Commission" means the Appalachian Regional Development Commission established by Section 101 of the Appalachian Regional Development Act of 1965;

(c) "State" means any one of the States listed in section 403 of the Appalachian Regional Development Act of 1965; and

(d) "Local authorities" or "local bodies of government" means a county, city, township, town, or borough, and other local governmental bodies organized and existing under authority or State laws.

§ 881.3 Qualification of projects.

(a) Projects for the reclamation and rehabilitation of strip-mined areas will be considered only if all of the lands embraced within the project are lands owned by the Federal Government, a State, or local bodies of government.

(b) Projects must be submitted by a State to the Commission and receive the approval of that body.

§ 881.4 Application of contribution.

(a) A State in its application for contribution to a project shall fully describe the conditions existing in the project area and give a full justification for the project in terms of the relationship of the potential benefits that will result from the project to the estimated costs of the project and in terms of the improvement, on a continuing basis, to the economic potential of the State or area which the project will bring about. If the project entails the reclamation and rehabilitation of strip and surface mined areas, the application shall state the uses to which the lands will be put.

(b) Before submitting a project to the Secretary for approval, the Director shall obtain from the State the following:

(1) Copies of inspection procedures, designs, plans and methods of engineering proposed for the construction, installation, services or work to be performed to accomplish the objectives of the project;

(2) Accurate information, data, and maps of the location of the project, the area involved, and, if the project consists of work designed to prevent or alleviate subsidence, information, data, and maps (if available) of the seams of coal to be filled or flushed;

(3) The proposed advertisement for bids for each project contract, which advertisement shall include suitable references concerning the fact that the project is one to the cost of which the Government will contribute under the Appalachian Regional Development Act of 1965, and that the State's acceptance of liability arising out of any bid shall be subject to contribution by the Government under the provisions of a cooperative agreement with the Government for that purpose;

(4) The proposed project contract, together with specifications and drawings pertaining to the equipment, materials, labor and work to be performed by the project contractor;

(5) Releases, proper consent or the necessary rights or interests in lands and coal formations, for gaining access to and carrying out work in or on the project, and other documents required by OSM for approval of the project, and in form and substance satisfactory to OSM;

(6) Certifications or documents, as may be required by OSM, indicating public ownership or control of subsurface coal or mineral rights accompanied by appropriate resolutions from the State or local authorities to indemnify and hold the Government harmless should any property owner within the project area make any claim for damage resulting from the work within the project area if releases, consents or rights or interests were not obtained from such property owner by the State or local authorities, and not to mine or permit mining of coals or other minerals in property owned or controlled by the State or local authorities.

(7) If the project is for the rehabilitation or reclamation of a strip mine area, evidence satisfactory to the Secretary that the State or local authority owns the lands upon which the project is proposed to be carried out, and that effective installation, operation, and maintenance safeguards will be enforced;

(8) The estimated total cost of the proposed project and, if the work is proposed to be performed in phases, the estimated cost of each phase.

(c) If the Secretary approves the project, the Director will submit to the State a coopertive agreement establishing the estimated cost of the project in the amount approved by the Secretary.

§ 881.5 Cooperative agreements.

(a) Each project shall be covered by a cooperative agreement between the Government, as represented by the Director, and the State. The agreement shall establish the total estimated cost of the project and, if the project is to be accomplished in phases, the estimated cost of each phase. The maximum obligations of the parties to share the cost of the project shall be stated in terms of the total estimated cost of the project and, if project is to be accomplished in phases, in terms of the estimated cost of each phase. Other responsibilities of the parties shall also be described in the agreement, as may be agreed upon and as may be in conformity with these regulations, to meet the needs and requirements of a particular project.

(b) The Government's obligation to contribute funds may be less than but shall not exceed 75 percent of the total estimated cost of the project. The obligation of the State (and, if appropriate, the local authorities) to contribute funds may be more but shall not be less than 25 percent of the total estimated cost of the project.

(c) None of the funds contributed by the Government or by the State shall be used for operating or maintaining the project or for the purchase of culm, rock, spoil, or other filling or flushing material.

(d) The Director may, without approval by the Secretary execute amendments to a cooperative agreement which will cover (1) acceptance of a bid on a proposed project contract that does not exceed by more than 20 percent the estimated cost, initially established in the cooperative agreement, of the work covered by the proposed project contract, and (2) the estimated costs of additional work under a project contract, if the estimated cost, initially established in the cooperative agreement, of the work covered by the project contract will not be increased by more than 20 percent.

§ 881.6 Project contract.

(a) Upon approval of the project by the Secretary, execution of the cooperative agreement, and receipt of an acceptable bid, the State shall carry out and execute the project through a project contract, or, if the work is to be done in phases, a series of project contracts, entered into by the State and its contractors or suppliers for the construction, installation, services or work to be performed.

(b) Project contracts shall be entered into only with the lowest responsible bidder pursuant to suitable procedures for advertising and competitive bidding. The Government's obligation to contribute to the cost of a project, or a phase of a project, is limited to the estimated costs established in the cooperative agreement. If the bids on work to be done under a proposed project contract exceed the estimated cost of the work established in the cooperative agreement, the State should not enter into the project contract unless the cooperative agreement has been amended to provide for an increase in contributions sufficient to meet the increase in costs, or unless the State wishes to assume the excess cost of the project.

(c) OSM shall be advised of the time and place of the opening of bids on a proposed project contract and may have a representative present.

(d) If the State amends a project contract, or issues a change order thereunder, and the amendment or change order results in an expenditure under the project contract in excess of the estimated cost of the work established in the cooperative agreement, the Government shall be under no obligation to contribute to such excess costs unless the cooperative agreement has been amended to provide for an increase in contributions by the parties sufficient to meet such excess costs.

(e) The State shall furnish the Director, in duplicate, a certified true executed copy of each project contract with related plans, specifications, and drawings annexed thereto, promptly upon its execution.

(f) The State shall include in each project contract provisions to the effect that—

(1) Regardless of any agreement between the State and the Government respecting contributions by the Government to the cost of the contract under the provisions of section 205(a)(1) of the Appalachian Regional Development Act of 1965 (Pub. L. 89-4, 79 Stat. 5), the Government shall not be considered to be a party to the contract or in any manner liable thereunder. Neither the Government nor any of its officers, agents, or employees shall be responsible for any loss, expense, damages to property, or injuries to persons, which may arise from or be incident to the use and occupation of any property affected by the operations contemplated under the project, or for damages to the property of the contractor, or for injuries to the person of the contractor, or for damages to the property, or injuries to the contractor's officers, agents, servants, or employees, or others who may be on said premises at their invitation or the invitation of any of them, and the State and the project contractor shall hold the Government and any of its officers, agents, or employees, harmless from all such claims.

(2) The Secretary of the Interior or the Director of OSM or their authorized representative may enter upon

and inspect the project at any reasonable time and may confer with the contractor and the State regarding the conduct of project operations.

(3) All laborers and mechanics employed by the contractor or subcontractors on the project shall be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act, as amended (40 U.S.C. 276a-276a-5). The Secretary of Labor shall have with respect to such labor standards, the authority and functions set forth in Reorganization Plan Number 14 of 1950 (15 FR 3176, 64 Stat. 1267, 5 U.S.C. 133-133z-15), and section 2 of the Act of June 13, 1934, as amended (48 Stat. 948, as amended; 40 U.S.C. 276(c)).

(4) To assure the use of local labor to the maximum extent practicable in the implementation of a project:

(i) Every contractor or subcontractor undertaking to do work on the project which is or reasonably may be done as onsite work, in carrying out such contract work shall give preference to qualified persons who regularly reside in the labor area as designated by the U.S. Department of Labor wherein such project is situated, or the subregion, or the Appalachian counties of the State wherein such project is situated, except:

(A) To the extent that qualified persons regularly residing in the area are not available;

(B) For the reasonable needs of any such contractor or subcontractor, to employ supervisory or specially experienced individuals necessary to assure an efficient execution of the contract;

(C) For the obligation of any such contractor or subcontractor to offer employment to present or former employees as the result of a lawful collective bargaining contract, provided that in no event shall the number of nonresident persons employed under paragraph (f)(4)(i)(C) exceed 20 percent of the total number of employees employed by such contractor and his subcontractors on such project.

(ii) Every such contractor and subcontractor shall furnish the appropriate U.S. Employment Service offices with a list of all positions for which laborers, mechanics, and other employees may be required.

(iii) Every such contractor and subcontractor shall furnish periodic reports to the contracting agency on the extent to which local labor has been used in carrying out the contract work.

§ 881.7 Administration of contributions.

(a) The Government's contribution to a State will be made only pursuant to a cooperative agreement and only upon the basis of payments made, or that are then due and payable, by the State under a project contract between the State and its contractor for the construction, installation, services or work performed on individual projects and shall not exceed 75 percent of such amounts.

(b) The State shall submit to the Director, not more often than once a month and for each cooperative agreement, a separate voucher which describes each payment made or that is due and payable by the State under a project contract. The amounts claimed under each voucher shall be certified by the State as proper charges under the project contract, and the State shall also certify that the amounts have either been paid or are due and payable thereunder. Insofar as the Government's contribution payments related to amounts due and payable rather than amounts already paid, the State shall disburse such funds together with the funds contributed by the State, promptly upon receipt from the Government.

(c) The State shall maintain suitable records and accounts of its transactions with and payments to project contractors, and the Government may inspect and audit such accounts and records during normal business hours and as it may deem necessary.

§ 881.8 Withholding of payments.

Whenever the Secretary, after reasonable notice and opportunity for hearing, finds that there is a failure by the State to expend funds in accordance with the terms and conditions governing the Government's contribution for an approved project, he shall notify the State that further payments will not be made to the State from available appropriations until he is satisfied that there will no longer be any such failure. Until the Secretary is so satisfied, payment of any financial contribution to the State shall be withheld.

§ 881.9 Reports.

At such times and in such detail as the Secretary shall require, the State shall furnish to the Secretary a statement with respect to each project showing the work done, the status of the project, expenditures, and amounts obligated, and such other information as may be required.

§ 881.10 Obligations of States or local authorities.

(a) The State shall have full responsibility for installing, operating, and maintaining projects constructed pursuant to the regulations in this part.

(b) The State shall give evidence, satisfactory to the Secretary, that it will enforce effective safeguards with respect to installation, operation, and maintenance.

(c) The State shall agree that neither the Government nor any of its officers, agents, or employees shall be responsible for any loss, expense, damages to property, or injuries to persons, which may arise from or be incident to work upon, or to the use and occupation of any property affected by operations under, the project, and the State shall agree to hold the Government and its officers, agents, or employees harmless from all such claims.

(d) In order to assure effective safeguards with respect to installation, operation, and maintenance, the State or local authority will be required to own (or control), the land, subsurface, or coal seams in instances such as the following:

(1) If the objective of the project is to prevent or alleviate subsidence, the State or local authority shall have or acquire such subsurface and underground rights or interests in such coal seams or coal measures as may be required to assure the stability and continued existence of the project and to such an extent as will give reasonable assurance that the work will not be disturbed in the future.

(2) If the objective of the project is to rehabilitate or reclaim strip-mined areas, the land shall be owned by the Federal, State, or local body of government. Such ownership shall comprise such mineral, subsurface and underground rights and interests as will assure that no further mining operations will be conducted upon or under the land in the future.

(3) If the objective of the project is to seal abandoned open shafts, slopes, air holes and other mine openings to underground workings where public safety hazards exist, or to control or prevent erosion, water pollution, or discharge of harmful mine waters, the State shall have or acquire such right, title or interest in the lands as will assure the stability and continued existence of the project work.

(4) The extent of ownership or control necessary shall be determined with respect to each individual project.

(e) The State or local authorities, shall agree not to mine or permit the mining of coal or other minerals in the land or property owned or controlled by the State or local authorities, if required by OSM to assure the success or protection of the project work for such period of time as may be required by OSM.

(f) Upon request of OSM, the State or local authority shall furnish and disclose the nature and extent of its right, title, or interest in lands within, or which may be affected by, the project and submit an analysis, in writing, of the title situation, the effectiveness, extent and strength of the title which has been acquired, and an opinion as to the protection which the documents conveying the various rights, titles, and interests in the land afford the project work and as to any defects in the title.

(g) If necessary, State and local authorities shall procure the enactment of State or local laws or ordinances providing authority to participate in the work and projects conducted pursuant to the regulations in this part on lands owned by the State, the local authorities, or private persons, and the requisite authority to permit the

State or local authorities to meet the obligations imposed by the regulations in this part or a cooperative agreement and to enter into project contracts of the kind and nature contemplated for the work to be performed.

§ 881.11 Nondiscrimination.

The State shall comply with the provisions of section 301 of Executive Order 11246 (Sept. 24, 1965; 30 FR 12319, 12935) and shall incorporate the provisions prescribed by section 202 of Executive Order 11246 in each project contract, and shall undertake and agree to assist and cooperate with the Director and the Secretary of Labor, obtain and furnish information, carry out sanctions and penalties, and refrain from dealing with debarred contractors, all as provided in said section 301.

§ 881.12 Civil rights.

State or local authorities shall comply with Title VI of the Civil Rights Act of 1964 (Pub. L. 88-352) and all requirements imposed by or pursuant to the regulations of the Department of the Interior entitled "Nondiscrimination in Federally-assisted Programs of the Department of the Interior—Effectuation of Title VI of the Civil Rights Act of 1964" (43 CFR Part 17) and shall give assurances of compliance in such forms as may be required by the Director.

PART 882—RECLAMATION ON PRIVATE LAND

Sec.
882.1 Scope.
882.10 Information collection.
882.12 Appraisals.
882.13 Liens.
882.14 Satisfaction of liens.

AUTHORITY: Secs. 201(c), 407 (a) and (b), 408, 409, 410, and 412(a), Pub. L. 95-87, 91 Stat. 449, 462, 463, 464, 465, and 466 (30 U.S.C. 1211, 1237, 1238, 1239, 1240, and 1242).

SOURCE: 47 FR 28599, June 30, 1982, unless otherwise noted.

§ 882.1 Scope.

This part authorizes reclamation on private land and establishes procedures for recovery of the cost of reclamation activities conducted on privately owned land by the OSM, State, or Indian tribe.

§ 882.10 Information collection.

The information collection requirements contained in §§ 882.12(c) and 882.13(b) were approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned clearance number 1029-0057. This information is being collected to meet the mandate of Secion 408 of the Act, which allows the State/Indian tribe to file liens on private property that has been reclaimed under certain conditions. This information will be used by the regulatory authority to ensure that the State/Indian tribe has sufficient programmatic capability to file liens. The obligation to respond is mandatory.

§ 882.12 Appraisals.

(a) A notarized appraisal of private land to be reclaimed which may be subject to a lien under § 882.13 shall be obtained from an independent appraiser. The appraisal shall state—

(1) The estimated market value of the property in its unreclaimed condition; and

(2) The estimated market value of the property as reclaimed.

(b) This appraisal shall be made prior to start of reclamation activities. The agency shall furnish to the appraiser information of sufficient detail in the from of plans, factual data, specifications, etc., to make such appraisals. When reclamation requires more than 6 months to complete, an updated appraisal under paragraph (a)(2) of this section shall be made to determine if the increase in value as originally appraised has actually occurred. Such updated appraisal shall not include any increase in value of the land as unreclaimed. If the updated appraised value results in lower increase in value, such increase shall be used as a basis for the lien. However, an increase in value resulting from the updated appraisal shall not be considered in determining a lien. OSM shall provide appraisal standards for Federal projects, and the State or Indian tribes shall provide appraisal standards for State or Indian tribal projects consistent with generally acceptable appraisal practice.

§ 882.13 Liens.

(a) OSM, State, or Indian tribe has the discretionary authority to place or waive a lien against land reclaimed if the reclamation results in a significant increase in the fair market value; except that—

(1) A lien shall not be placed against the property of a surface owner who acquired title prior to May 2, 1977, and who did not consent to, participate in, or exercise control over the mining operation which necessitated the reclamation work.

(2) The basis for making a determination of what constitutes a significant increase in market value or what factual situation constitutes a waiver of lien will be made by OSM, State, or Indian tribe pursuant to the Congressional intent expressed in Section 408 of the Act and consistent with State or Indian tribal laws governing liens.

(3) A lien may be waived if findings made prior to construction indicate that the reclamation work to be performed on private land shall primarily benefit the health, safety, or environmental values of the greater community or area in which the land is located; or if the reclamation is necessitated by an unforeseen occurrence, and the work performed to restore that land will not result in a significant increase in the market value of the land as it existed immediately before the unforeseen occurrence; and

(4) OSM, State, or Indian tribe may waive the lien if the cost of filing it, including indirect costs to OSM, State, or Indian tribe, exceeds the increase in fair market value as a result of reclamation activities.

(b) If a lien is to be filed, the OSM, State, or Indian tribe shall, within 6 months after the completion of the reclamation work, file a statement in the office having responsibility under applicable law for recording judgments and placing liens against land. Such statement shall consist of notarized copies of the appraisals obtained under § 882.12 and may include an account of moneys expended for the reclamation work. The amount reported to be the increase in value of the property shall constitute the lien to be recorded in compliance with existing Federal, State or Indian tribal laws: *Provided, however,* That prior to the time of the actual filing of the proposed lien, the landowner shall be notified of the amount of the proposed lien and shall be allowed a reasonable time to prepay that amount instead of allowing the lien to be filed against the property involved.

(c) Within 60 days after the lien is filed the landowner may petition under local law to determine the increase in market value of the land as a result of reclamation work. Any aggrieved party may appeal in the manner provided by local law.

§ 882.14 Satisfaction of liens.

(a) A lien placed on private property shall be satisfied, to the extent of the value of the consideration received, at the time of transfer of ownership. Any unsatisfied portion shall remain as a lien on the property.

(b) The OSM, State, or Indian tribe which files a lien on private property shall maintain or renew it from time to time as may be required under State or local law.

(c) Moneys derived from the satisfaction of liens established under this part shall be deposited in the appropriate abandoned mine reclamation fund account.

PART 884—STATE RECLAMATION PLANS

Sec.
884.1 Scope.
884.11 State eligibility.
884.13 Content of proposed State reclamation plan.
884.14 State reclamation plan approval.
884.15 State reclamation plan amendments.
884.16 Suspension of plan.
884.17 Impact assistance.

AUTHORITY: Pub. L. 95-87; 30 U.S.C. 1201 *et seq.*

SOURCE: 47 FR 28600, June 30, 1982, unless otherwise noted.

§ 884.1 Scope.

This part establishes the procedures and requirements for the preparation, submission and approval of State reclamation plans.

§ 884.11 State eligibility.

A State is eligible to submit a State reclamation plan if it has eligible lands or water as defined in § 870.5 within its boundaries. A State is eligible for a State reclamation plan to be approved by the Director if it has an approved State regulatory program under section 503 of the Act and meets the other requirements of this chapter and the Act.

§ 884.13 Content of proposed State reclamation plan.

Each proposed State reclamation plan shall be submitted to the Director in writing and shall include the following information:

(a) A designation by the Governor of the State of the agency authorized to administer the State reclamation program and to receive and administer grants under Part 886 of this chapter.

(b) A legal opinion from the State Attorney General on the chief legal officer of the State agency that the designated agency has the authority under State law to conduct the program in accordance with the requirements of Title IV of the Act.

(c) A description of the policies and procedures to be followed by the designated agency in conducting the reclamation program, including—

(1) The purposes of the State reclamation program;

(2) The specific criteria, consistent with section 403 of the Act for ranking and identifying projects to be funded;

(3) The coordination of reclamation work among the State reclamation program, the Rural Abandoned Mine Program administered by the Soil Conservation Service, the reclamation programs of any Indian tribes located within the States, and OSM's reclamation programs; and

(4) Policies and procedures regarding land acquisition, management and disposal under 30 CFR Part 879;

(5) Policies and procedures regarding reclamation on private land under 30 CFR Part 882;

(6) Policies and procedures regarding rights of entry under 30 CFR Part 877; and

(7) Public participation and involvement in the preparation of the State reclamation plan and in the State reclamation program.

(d) A description of the administrative and management structure to be used in conducting the reclamation program, including—

(1) The organization of the designated agency and its relationship to other State organizations or officials that will participate in or augment the agency's reclamation capacity;

(2) The personnel staffing policies which will govern the assignment of personnel to the State reclamation program;

(3) The purchasing and procurement systems to be used by the agency. Such systems shall meet the requirements of Office of Management and Budget Circular A-102, Attachment 0; and

(4) The accounting system to be used by the agency, including specific procedures for the operation of the State Abandoned Mine Reclamation Fund.

(e) A general description, derived from available data, of the reclamation activities to be conducted under the State reclamation plan, including the known or suspected eligible lands and waters within the State which require reclamation, including—

(1) A map showing the general location or known or suspected eligible lands and waters;

(2) A description of the problems occurring on these lands and waters; and

(3) How the plan proposes to address each of the problems occurring on these lands and waters.

(f) A general description, derived from available data, of the conditions prevailing in the different geographic areas of the State where reclamation is planned, including—

(1) The economic base;

(2) Significant esthetic, historic or cultural, and recreational values; and

(3) Endangered and threatened plant, fish, and wildlife and their habitat.

§ 884.14 State reclamation plan approval.

(a) The Director shall act upon a State reclamation plan within 90 days after submittal. A State reclamation plan shall not be approved until the Director has—

(1) Held a public hearing on the plan within the State which submitted it, or made a finding that the State provided adequate notice and opportunity for public comment in the development of the plan;

(2) Solicited and considered the views of other Federal agencies having an interest in plan;

(3) Determined that the State has the legal authority, policies, and administrative structure necessary to carry out the proposed plan;

(4) Determined that the proposed plan meets all the requirements of this subchapter;

(5) Determined that the State has an approved State regulatory program; and

(6) Determined that the proposed plan is in compliance with all applicable State and Federal laws and regulations.

(b) If the Director disapproves a proposed State reclamation plan, the Director shall advise the State in writing of the reasons for disapproval. The State may submit a revised proposed State reclamation plan at any time under the procedures of this section.

§ 884.15 State reclamation plan amendments.

(a) A State may, at any time, submit to the Director a proposed amendment or revision to its approved reclamation plan. If the amendment or revision changes the objectives, scope or major policies followed by the State in the conduct of its reclamation program, the Director shall follow the procedures set out in § 884.14 in approving or disapproving an amendment or revision of a State reclamation plan.

(b) The Director shall promptly notify the State of all changes in the Act, the Secretary's regulations or other circumstances which may require an amendment to the State reclamation plan.

(c) The State shall promptly notify OSM of any conditions or events that prevent or impede it from administering its State reclamation program in accordance with its approved State reclamation plan.

(d) State reclamation plan amendments may be required by the Director when—

(1) Changes in the Act or regulations of this chapter result in the approved State reclamation plan no longer meeting the requirements of the Act or this chapter; or

(2) The State is not conducting its State reclamation program in accordance with the approved State reclamation plan.

(e) If the Director determines that a State reclamation plan amendment is required, the Director, after consultation with the State, shall establish a reasonable timetable which is consistent with established administrative or legislative procedures in the State for submitting an amendment to the reclamation plan.

(f) Failure of a State to submit an amendment within the timetable established under paragraph (e) of this section or to make reasonable or diligent efforts in that regard may result in either the suspension of the reclamation plan under § 884.16, reduction, suspension or termination of existing AML grants under § 886.18, or the withdrawal from consideration for approval of all grant applications submitted under § 886.15.

[51 FR 9444, Mar. 19, 1986]

§ 884.16 Suspension of plan.

(a) The Director may suspend a State reclamation plan in whole or in part, if he determines that—

(1) Approval of the State regulatory program has been withdrawn in whole or in part;

(2) The State is not conducting the State reclamation program in accordance with its approved State reclamation plan; or

(3) The State has not submitted a reclamation plan amendment within the time specified under § 884.15.

(b) If the Director determines that the plan should be suspended, the Director shall notify the State by mail, return receipt requested, of the proposed action. The notice of proposed suspension shall state the reasons for the proposed action. Within 30 days the State must show cause why such action should not be taken. The Director shall afford the State an opportunity for consultation, including a hearing if requested by the State and performance of remedial action prior to the notice of suspension.

(c) The Director shall notify the State of his decision in writing. The decision of the Director shall be final.

(d) The Director shall lift the suspension if he determines that the deficiencies that led to suspension have been corrected.

[47 FR 28600, June 30, 1982, as amended at 51 FR 9444, Mar. 19, 1986]

§ 884.17 Impact assistance.

(a) The State reclamation plan may provide for construction of specific public facilities in communities impacted by coal development. This form of assistance is available when the Governor of the State has certified, and the Director has concurred that—

(1) All reclamation with respect to past coal mining and with respect to the mining of other minerals and materials has been accomplished;

(2) The specific public facilities are required as a result of coal development; and

(3) Impact funds which may be available under the Federal Mineral Leasing Act of 1920, as amended, or the Act of October 20, 1978, Public Law 94-565 (90 Stat. 2662) are inadequate for such construction.

(b) Grant applications for impact assistance may be submitted in accordance with § 886.13 of this chapter.

PART 886—STATE RECLAMATION GRANTS

Sec.
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AUTHORITY: Pub. L. 95-87; 30 U.S.C. 1201 *et seq.*

SOURCE: 47 FR 28601, June 30, 1982, unless otherwise noted.

§ 886.1 Scope.

This part sets forth procedures for grants to States having an approved State reclamation plan for the reclamation of eligible lands and water and other activities necessary to carry out the plan as approved. OSM's "Final Guidelines for Reclamation Programs and Projects" (45 FR 14810-14819, March 6, 1980) should be utilized as applicable.

§ 886.3 Authority.

(a) The Director is authorized to approve or disapprove applications for grants under this part if the total amount of the grants does not exceed the moneys appropriated by the Congress and specifically allocated to the State under § 872.11(b)(2).

(b) The Director is authorized to approve additional grants to a State from the moneys available under § 872.11(b)(5).

§ 886.10 Information collection.

The information collection requirements contained in 30 CFR 886.15(c), 886.17(b), 886.18(c), 886.23 (a) and (b), and 886.24 (a) and (b) were approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned clearance numbers 1029-0016, 1029-0017, 1029-0059, 1029-0064, 1029-0068, 1029-0070, 1029-0072 through 1029-0079. This information is being collected to meet the mandate of section 405 of the Act, which allows the Secretary to grant funds to States/Indian tribes pursuant to Section 402(g) and which are necessary to implement the State/Indian tribe reclamation program. This information will be used by the OSM to ensure that the State/Indian tribe complies with OMB Circular A-102 and sound principles of grants management. The obligation to respond is mandatory.

§ 886.11 Eligibility for grants.

A State is eligible for grants under this part if it has a State reclamation plan approved under Part 884 of this chapter.

§ 886.12 Coverage and amount of grants.

(a) An agency may use moneys granted under this part to adminster the approved State reclamation program and to carry out the specific reclamation activities included in the plan and described in the annual grant agreement. The moneys may be used to cover costs to the agency for services and materials obtained from other State and Federal agencies or local jurisdictions according to the OMB Circular A-87.

(b) Grants shall be approved for reclamation of eligible lands and water, construction of public facilities, program administration, the incremental cost of filling voids and sealing tunnels with waste from mine waste piles reworked for conservation purposes, and community impact assistance. To the extent technologically and economically feasible, public facilities that are planned, constructed or modified in whole or in part with abandoned mine land grant funds should utilize fuel other than petroleum or natural gas.

(c) Acquisition of land or interests in land and any mineral or water rights associated with the land shall be approved for up to 90 percent of the costs.

§ 886.13 Grant period.

(a) Except as provided in paragraph (b) of this section, the grant funding period for projects shall not exceed 3 years. The grant period for administrative costs of the authorized agency shall not exceed 1 year.

(b) The Director may, in order to facilitate consideration of impact assistance funding, approve a grant period for specific projects beyond 3 years if he finds, on the basis of the information contained in the grant application that—

(1) Projects to be funded will fulfill all the objectives of section 403 and section 409 of the Act;

(2) The requests are for funding of specific projects with adequate plans, acceptable deadlines for completion, and the likelihood of specific construction contracts to meet the project deadlines; and

(3) Sufficient funds allocated to the State or Indian tribe under § 872.11(b)(2) of this chapter are available to complete the projects, including provisions for corrective works on completed projects and any additional eligible projects which may be discovered.

§ 886.14 Annual submission of projects.

The agency shall cooperate with OSM in the development of the annual submission of projects by providing the information required by section 405(f) of the Act for use by the Director in the preparation of his requests for appropriation of moneys for the State reclamation grants. The schedule for such estimates shall be determined by the OSM on an annual basis. Funds required to prepare the annual submission of projects under section 405(f) of the Act may be included in administrative grants under § 886.12.

§ 886.15 Grant application procedures.

(a) OSM shall act upon a grant application within 90 days of submittal. If OSM approves an agency's grant application, a grant agreement shall be prepared and signed by the agency and the Director.

(b) If the application is not approved, OSM shall set forth in writing the reasons for disapproval and may propose modifications if appropriate. The agency may resubmit the application or appropriate revised portions of the application. OSM shall approve or disapprove the resubmitted grant application within 30 days of the resubmittal.

(c) A preapplication is not required if the total of the grant requested is within the amounts allocated to the State under § 872.11(b)(2) of this chapter. The agency shall use the following application forms and procedures applicable to construction and/or nonconstruction programs specified by OSM in accordance with Office of Management and Budget Circular A-102, Attachment M:

(1) SF 424 Application for Federal Assistance;
(2) OSM 50A Section A of the Project Approved Information;
(3) OSM 50B Section B of the Project Approved Information;
(4) OSM 51 Program Narrative Statement
(5) OSM 47 OSM Budget Information Report; and
(6) OSM 48 Budget Information-Construction Report

(d) The agency shall agree to perform the grant in accordance with the Act, OSM implementing regulations, and applicable OMB and Treasury Circulars.

(e) Complete copies of plans and specifications for projects shall not be required before the grant is approved nor at the start of the project. The Director may review such plans and specifications after the start of the project in the agency office, on the project site, or at any other appropriate site.

(f) A description of the actual or planned public involvement in the decision to undertake the work, in the planning of the reclamation activities, and in the decision on how the land will be used after reclamation shall be included in the application.

§ 886.16 Grant agreements.

(a) If the Director approves an agency's grant application, OSM shall prepare a grant agreement, which includes:

(1) A statement of the work to be covered by the grant;

(2) A statement of the approvals of specific actions as required under this subchapter or the conditions to be met before such approvals can be given if moneys are included in the grant for such actions;

(3) The amounts approved for each individual project included in the grant application; and

(4) Allowable transfers of funds to other Federal, State or local agencies.

(b) The Director may allow an agency to assign functions and funds to other Federal, State or local agencies. The Director shall require the grantee agency to retain responsibility for overall administration of that grant, including use of funds and reporting.

(c) The Director shall transmit four copies of the grant agreement by mail, return receipt requested, or by hand to the agency for signature. The agency shall execute the grant agreement and return all copies within 3 weeks after receipt, or within an extension of time granted by the Director.

(d) The Director shall sign the agreement upon its return from the agency or when funds are available for the grants, whichever is later, and return one copy to the agency. The grant is effective and constitutes an obligation of Federal funds at the time the Director signs the agreement.

(e) Neither the approval of the grant application nor the award of any grant shall commit or obligate the United States to award any continuation grant or to enter into any grant revision, including grant increases to cover cost overruns.

§ 886.17 Grant and budget revisions.

(a) Grant revisions. (1) A grant revision is a written alteration of the terms of conditions of the grant agreement, whether accomplished on the initiative of the agency or OSM. All procedures for the grant revisions shall conform to OMB Circular A-102.

(2) The agency shall promptly notify the Director, or the Director shall promptly notify the agency, in writing of events or proposed changes which may require a grant revision. The agency shall notify the Director in advance of—

(i) Planned changes in the scope or objective of any individual project even if the change will not result in a change in the total cost of the project; and

(ii) Changes which will result in an extension of the grant period.

(b) Budget revisions. (1) The agency shall obtain the written approval of the OSM for budget revisions whenever the total amount of the revisions result in an increase or decrease of more than $5,000 or 5 percent of the grant amount, whichever is greater.

(2) OSM shall either approve or disapprove the budget revision within 15 days of its receipt.

(3) Changes of less than $5,000 or 5 percent of the grant amount may be made by the agency without advance

notification or approval of OSM if the change:

(i) Can be made without exceeding the total amount of the project grant;

(ii) Does not involve a change in the scope or objective of the project involved; and

(iii) Is consistent with the procedures set forth in Office of Management and Budget Circular A-102, attachment K.

§ 886.18 Grant reduction, suspension, and termination.

(a) Conditions for reduction, suspension or termination.

(1) If an agency violates the terms of a grant agreement or an approved reclamation plan, OSM may reduce, suspend or terminate the grant.

(2) If an agency fails to expend moneys allocated and granted within three years from the date of allocation, or an extension granted under § 866.13, OSM may reduce the grant in accordance with § 872.11(b)(2) of this subchapter.

(3) If an agency fails to implement, enforce, or maintain an approved State regulatory program or any part thereof and, as a result, the administration and enforcement grant provided under Part 735 of this Chapter is terminated, OSM shall terminate the grant awarded under this part.

(4) If an agency is not in compliance with the following nondiscrimination provisions, OSM shall terminate the grant:

(i) Title VI of the Civil Rights Act of 1964, Pub. L. 88-352, 78 Stat. 252 (42 U.S.C. 2000d-1). "Nondiscrimination in Federally Assisted Programs", which provides that no person in the United States shall on the grounds of race, color, or national origin be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance, and the implementing regulations in 43 CFR Part 17.

(ii) Executive Order 11246, as amended by Executive Order 11375, "Equal Employment Opportunity," requiring that employees or applicants for employment not be discriminated against because of race, creed, color, sex, or national origin, and the implementing regulations in 40 CFR Part 60.

(iii) Section 504 of the Rehabilitation Act of 1973, Pub. L. 93-112, 87 Stat. 355 (29 U.S.C. 794), as amended by Executive Order 11914, "Nondiscrimination with Respect to the Handicapped in Federally Assisted Programs."

(5) If an agency fails to enforce the financial interest provisions of Part 705 of this chapter, OSM shall terminate the grant.

(6) If an agency fails to submit reports required by this subchapter or Part 705 of this chapter, OSM shall terminate the grant.

(7) If an agency fails to submit a reclamation plan amendment as required by § 884.15, OSM may reduce, suspend, or terminate all existing AML grants in whole or in part or may refuse to process all future grant applications.

(b) *Grant reduction, suspension, and termination procedures.* (1) OSM shall give at least 30 days written notice to the agency by mail, return receipt requested, of intent to reduce, suspend, or terminate a grant. OSM shall include in the notice the reasons for the proposed action and the proposed effective date of the action.

(2) OSM shall afford the agency opportunity for consultation and remedial action prior to reducing or terminating a grant.

(3) OSM shall notify the agency of the termination, suspension, or reduction of the grant in writing by mail, return receipt requested.

(4) Upon termination, the agency shall refund or credit to the Fund that remaining portion of the grant money not encumbered. However, any portion of the grant that is required to meet contractual commitments made prior to the effective date of termination shall be retained by the agency.

(5) Upon notification of intent to terminate the grant, the agency shall not make any new commitments without the approval of the OSM.

(6) OSM may allow termination costs as determined by applicable Federal cost principles listed in Office of Management and Budget Circular A-87.

(c) *Appeals.* (1) Within 30 days of OSM's decision to reduce, suspend, or terminate a grant, the agency may appeal the decision to the Secretary.

(2) The agency shall include in the appeal—

(i) A statement of the decision being appealed; and

(ii) The facts which the agency believes justify a reversal or modification of the decision.

(3) The Secretary shall act upon the appeal within 30 days of receipt.

[47 FR 28601, June 30, 1982, as amended at 51 FR 9444, Mar. 19, 1986]

§ 886.19 Audit.

The agency shall arrange for an independent audit at least once every two years, pursuant to the requirements of Office of Management and Budget Circular No. A-102. The audit will be performed in accordance with the audit guides provided by the General Accounting Office and by the "Approved Compliance Supplement" issued by the Office of Management and Budget.

§ 886.20 Administrative procedures.

The agency shall follow administrative procedures governing accounting, payment, property, and related requirements contained in Office of Management and Budget Circular No. A-102 and use the following form: OSM-60 (Report of Government Property).

(Pub. L. 95-87, 30 U.S.C. 1201 *et seq.*)

[48 FR 27363, June 14, 1983]

§ 886.21 Allowable costs.

(a) Reclamation project costs which shall be allowed include actual costs of construction, operation and maintenance, planning and engineering, construction inspection, other necessary administration costs, and up to 90 percent of the costs of the acquisition of land.

(b) Costs must conform with any limitations, conditions, or exclusions set forth in the grant agreement.

§ 886.22 Financial management.

(a) The agency shall account for grant funds in accordance with the requirement of Office of Management and Budget Circular No. A-102. Agencies shall use generally accepted accounting principles and practices consistently applied. Accounting for grant funds must be accurate and current.

(b) The agency shall adequately safeguard all funds, property, and other assets and shall assure that they are used solely for authorized purposes.

(c) The agency shall provide a comparison of actual amounts spent with budgeted amounts for each grant.

(d) When advances are made by a letter-of-credit method, the agency shall make drawdowns from the U.S. Treasury through its commercial bank as closely as possible to the time of making the disbursements.

(e) The agency shall design a systematic method to assure timely and appropriate resolution of audit findings and recommendations.

§ 886.23 Reports.

(a) For each grant/cooperative agreement, the agency shall semiannually submit to OSM the following reports prepared according to the Office of Management and Budget Circular No. A-102, Attachments H and I:

(1) Financial Status Report, Form SF-269, for the agency's administrative grant/cooperative agreement and the Performance Report, Form OSM-51, covering the performance aspects of the grant/cooperative agreement.

(2) Outlay Report and Request for Reimbursement for Construction Programs, Form SF-271, and the Performance Report, Form OSM-51, for each activity or project on which some work has occurred.

(b) For each grant/cooperative agreement, the agency shall annually submit to the Office the following reports prepared according to Office of Management and Budget Circular A-102, Attachments H and I:

(1) A final Financial Status Report, Form SF-269, for the Agency's administrative grant/cooperative agreement and a final Performance Report, Form OSM-51, covering the performance aspects of the grant/cooperative agreement.

(2) An annual Outlay Report and Request for Reimbursement for Construction Programs, Form SF-271, and a cumulative annual Performance

Report, Form OSM-51, which includes—

(i) For each project or activity, a brief description and the type of reclamation performed, the project location, the landowner's name, the amounts of land or water reclaimed or being reclaimed, and a summary of achieved or expected benefits;

(ii) For any land previously acquired by not disposed of, a statement of current or planned uses, location and size in acres, and any revenues derived from use of the land; and

(iii) For any permanent facilities acquired or constructed but not disposed of, a description of the facility and a statement of current or planned uses, location, and any revenues derived from the use of the facility.

§ 886.21 Records.

(a) The agency shall maintain complete records in accordance with Office of Management and Budget Circular A-102, Attachment C. This includes, but is not limited to, books, documents, maps, and other evidence and accounting procedures and practices sufficient to reflect properly—

(1) The amount and disposition by the agency of all assistance received for the program; and

(2) The total direct and indirect costs of the program for which the grant was awarded.

(b) Subgrantees and contractors, including contractors for professional services, shall maintain books, documents, papers, maps, and records which are pertinent to a specific grant award.

PART 887—SUBSIDENCE INSURANCE PROGRAM GRANTS

Sec.

887.1 Scope.
887.3 Authority.
887.5 Definitions.
887.10 Information collection.
887.11 Eligibility for grants.
887.12 Coverage and amount of grants.
887.13 Grant period.
887.15 Grant administration requirements and procedures.

AUTHORITY: Sec. 401(c)(1), Pub. L. 95-87, 91 Stat. 456, as amended by Pub. L. 98-473, 98 Stat. 1875 (30 U.S.C. 1231).

SOURCE: 51 FR 5493, Feb. 13, 1986, unless otherwise noted.

§ 887.1 Scope.

This part sets forth procedures for grants to States having an approved State reclamation plan for the establishment, administration and operation of self-sustaining individual State administered programs to insure private property against damages caused by land subsidence resulting from underground coal mining.

§ 887.3 Authority.

The Director is authorized to approve or disapprove applications for grants up to a total amount of $3,000,000 for each State with an approved State reclamation plan provided moneys are available under § 872.11(b)(2) of this chapter and section 402(g)(2) of Pub. L. 95-87 (30 U.S.C. 1232).

§ 887.5 Definitions.

As used in this part—

Establishment—means either the development of a subsidence insurance program or the administration or operation of a subsidence insurance program.

Private Property—means any or all of the following: dwellings and improvements, commercial and industrial structures, utilities, underground structures such as sewers, pipes, wells and septic systems, sidewalks and driveways, and land.

Self-sustaining—means maintaining an insurance rate structure which is designed to be actuarially sound. Self-sustaining requires that State subsidence insurance programs provide for recovery of payments made in settlement for damages from any party responsible for the damages under the law of the State. Actuarial soundness implies that funds are sufficient to cover expected losses and expenses including a reasonable allowance for underwriting services and contingencies. Self-sustaining shall not preclude the use of funds from other non-Federal sources.

State Administered—means administered either directly by a State agency or for a State through a State authorized commission, board, contractor, such as an insurance company, or other entity subject to State direction.

§ 887.10 Information collection.

Since the information collection requirement contained in 30 CFR 887.12 has fewer than 10 respondents per year, it is exempt from the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) and does not require clearance by OMB.

§ 887.11 Eligibility for grants.

A State is eligible for grants under this part if it has a State reclamation plan approved under Part 884 of this Chapter and if it has funds available under § 872.11(b)(2) of this Chapter and section 402(g)(2) of Pub. L. 95-87 (30 U.S.C. 1232).

§ 887.12 Coverage and amount of grants.

(a) An agency may use moneys granted under this Part to develop, administer, and operate a subsidence insurance program to insure private property against damages caused by subsidence resulting from underground coal mining. The moneys may be used to cover costs to the agency for services and materials obtained from other State and Federal agencies or local jurisdictions according to OMB Circular A-87. Moneys granted may be used to cover capitalization requirements and initial reserve requirements mandated by applicable State law provided use of such moneys is consistent with OMB Circular A-102.

(b) The grant application shall contain the following:

(1) A narrative statement describing how the subsidence insurance program is "State administered," and

(2) A narrative statement describing how the funds requested will achieve a self-sustaining individual State administered program to insure private property against subsidence resulting from underground coal mining.

(c) Grants funded under this Part cannot exceed a total of $3,000,000 per State.

(d) Moneys granted may not be used for lands that are ineligible for reclamation funding under Title IV of the Surface Mining Control and Reclamation Act of 1977 (Pub. L. 95-87).

(e) Insurance premiums shall be considered program income and must be used to further eligible subsidence insurance program objectives in accordance with the Uniform Administrative Requirements for Grants to States and Local Governments, OMB, Circular A-102, attachment E.

§ 887.13 Grant period.

The grant funding period shall not exceed eight years from the time the grant is approved by OSM. Unexpended funds remaining at the end of any grant period shall be returned according to OMB Circular A-102, attachment E.

§ 887.15 Grant administration requirements and procedures.

The requirements and procedures for grant administration set forth for State reclamation grants in Part 886 of this chapter shall be used for subsidence insurance grants.

PART 888—INDIAN RECLAMATION PROGRAMS

Sec.
888.1 Scope.
888.2 Objectives.
888.11 Interim procedures.

AUTHORITY: Secs. 201(c), 405(k), 412(a), and 710, Pub. L. 95-87, 91 Stat. 449, 460, 466, and 523 (30 U.S.C. 1211, 1235, 1242, and 1300).

SOURCE: 47 FR 28604, June 30, 1982, unless otherwise noted.

§ 888.1 Scope.

This part is reserved for any additional or unique regulations that may be required as a result of the special study report submitted pursuant to section 710 of the Act and to achieve the purposes of the Act on Indian lands. Because of the special jurisdictional status of Indian lands, general responsibilities for administration of Indian reclamation programs are set forth on an interim basis.

§ 888.2 Objectives.

(a) The objectives of this part are to provide a temporary vehicle for mitigation of emergency situations or extreme danger situations arising from past mining practices and to begin reclamation of other areas determined to have high priority on Indian lands.

(b) Upon completion or required legislation, this part will be either deleted and supplanted by the other parts of this chapter dealing with State and Indian reclamation programs or expanded as required to achieve the purposes of the Act.

§ 888.11 Interim procedures.

(a) The Director is authorized to receive proposals from Indian tribes for projects which should be carried out on Indian lands and to carry out such projects pursuant to Parts 872 through 882 of this chapter.

(b) The Director shall consult with the Indian tribe and the Bureau of Indian Affairs' office having jurisdiction over the Indian lands on all reclamation activities carried out on indian lands under this subchapter.

(c) If a proposal is made by an Indian tribe and approved by the Director, the tribal governing body shall approve the project plans. The costs of the project may be charged against the money allocated to OSM under § 872.11(b)(5).

(d) Approved projects may be carried out directly by the Director or through such arrangements as the Director may make with the Bureau of Indian Affairs or other agencies.

SUBCHAPTER S—MINING AND MINERAL RESEARCH INSTITUTES

PART 890—GRANTS FOR MINING AND MINERAL RESOURCES, RESEARCH INSTITUTES AND MINERAL RESEARCH PROJECTS

Sec.

890.1 Scope.
890.2 Objectives.
890.3 Authority.
890.4 Responsibility.
890.5 Definitions.
890.6 Eligibility for mineral institute allotments.
890.7 Eligibility for research grants.
890.8 Eligibility for scholarships and fellowships.
890.9 Programs of institutes.
890.10 Applications for initial allotments to institutes.
890.11 Applications for allotments after the first fiscal year.
890.12 Applications for research grants.
890.13 Applications for scholarships and fellowships.
890.14 Permissible transfers of research and institute assistance funds.
890.15 Approval of allotments and award of grants.
890.16 Other Federal requirements.
890.17 Progress and accomplishment reports.
890.18 Fiscal and accounting.
890.19 Audits and inspections.
890.20 Filing deadlines and amounts of grants.
890.21 Grant agreements.
890.22 Grant amendments.
890.23 Grant reduction and termination.

AUTHORITY: Pub. L. 95-87 (30 U.S.C. 1221, et seq).

SOURCE: 43 FR 38559, Aug. 28, 1978, unless otherwise noted.

§ 890.1 Scope.

This part sets forth policies and procedures for grants to establish and assist Mining and Mineral Resources Research Institutes and to support mining and mineral research projects.

§ 890.2 Objectives.

The objectives of the assistance under this part are:

(a) To support research and training in mining and mineral resources problems related to the mission of the Department of the Interior.

(b) To contribute to a comprehensive nationwide program of mining and mineral research having due regard for the protection and conservation of the environment.

(c) To support specific mineral research and demonstration projects of industrywide application.

(d) To assist the States in carrying on the work of competent and qualified mining and mineral resources research institutes.

(e) To provide scholarships, graduate fellowships and postdoctoral fellowships in mining and mineral resources, and allied fields such as mining engineering, civil engineering, soil conservation, hydrology, geology, chemistry, ecology, wildlife biology, land use planning, and resources management.

§ 890.3 Authority.

(a) Section 301 of the Surface Mining Control and Reclamation Act of 1977 (Pub. L. 95-87) authorizes the Secretary to make grants available to assist the States in carrying on the work of competent and qualified mining and mineral resources research institutes.

(b) Section 302(a) of the Act authorizes the Secretary to make grants available to institutes to meet the expenses of mineral research and demonstration projects and of research into any aspects of mining and mineral resources problems related to the mission of the Department of the Interior which may be deemed desirable and are not otherwise being studied.

(c) Section 302(c) of the Act authorizes the Secretary to provide scholarships, graduate fellowships, and postdoctoral fellowships.

(d) Section 309 of the Act authorizes the Secretary to appoint an Advisory Committee on Mining and Mineral Resources Research and to designate the chairman of the Advisory Committee.

§ 890.4 Responsibility.

(a) The Secretary of the Interior is responsible for administering the program authorized under Title III—State Mining and Mineral Resources and Research Institutes—of the Act and may delegate this authority for all sections, with the exception of section 309 (a) and (b), for the administration of activities and operations established therein.

(b) The Director shall administer the programs for mining and mineral resource research institutes, for mineral research and demonstration projects and for scholarships, graduate fellowships and postdoctoral fellowships.

§ 890.5 Definitions.

As used in this chapter, the term—

(a) *Act* means the Surface Mining Control and Reclamation Act of 1977 (Pub. L. 95-87),

(b) *Title* means Title III of the Act concerning State Mining and Mineral Resources and Research Institutes,

(c) *Secretary* means the Secretary of the Interior or his authorized representative,

(d) *Advisory Committee* means the Advisory Committee on Mining and Mineral Resources Research appointed by the Secretary,

(e) *Institute* means a competent and qualified mining and mineral resources research institute, center, or component of a college or university, established in accordance with the provisions of Title III of the Act,

(f) *Director* means the Director of the Office of Surface Mining Reclamation and Enforcement,

(g) *Scientists* and *Engineers* means individuals in any professional discipline in the life, physical, or social sciences,

(h) *Allotment* means the funds made available to an institute on a matching basis in a particular fiscal year pursuant to section 301 of the Act and regulations in this chapter,

(i) *Office* means the Office of Surface Mining Reclamation and Enforcement, Department of the Interior, Washington, D.C. 20240,

(j) *Assistant Director* means the Assistant Director for Technical Services and Research of the Office,

(k) *Mineral resource research* means research, investigations, demonstrations, experiments or training in: (1) Mineral exploration, extraction, processing, and development; (2) production of mineral resources; (3) mining and mineral technology; (4) mineral supply and demand; (5) conservation and best use of available supplies of minerals and other resources affected by mineral extraction; and (6) the economic, legal, social, engineering, recreational, biological, geographic, ecological, and land use aspects of mining, mineral resources, and mineral reclamation.

§ 890.6 Eligibility for mineral institute allotments.

To be eligible for financial assistance under section 301(a) of the Act, a college or university must meet all of the following criteria:

(a) Be either (1) a public college or university or (2) a private college or university in a State which does not have an eligible public college or university, and met all other requirements of this paragraph;

(b) Have had in existence on August 3, 1977, a school of mines, division or department conducting a program of substantial instruction and research in mining or mineral extraction, or have established a school of mines, division or department conducting a program of substantial instruction and research in mining or mineral extraction subsequent to August 3, 1977, which has been in existence for at least 2 years prior to the date of application for financial assistance;

(c) Employ at least four full-time permanent faculty members in the school of mines, division or department conducting instruction and research in mining and mineral extraction;

(d) Determined to be eligible for assistance in accordance with section 301 of the Act and these regulations by the advisory committee and designated by the Director;

(e) Has monies available to support the institute which match the Federal share with non-Federal funds on a dollar-to-dollar basis and are at least equal to the Federal share; and

(f) Designated by the Governor of the State if there is more than one eligible college or university in a State.

provided there is no designation to the contrary by act of the State legislature.

§ 890.7 Eligibility for research grants.

(a) Under section 302(a) of the Act and subject to the availability of appropriations, additional funds may be made available to the institute for:

(1) Research into any aspects of mining and mineral resources problems, including reclamation and enforcement, which are related to the mission of the Department of the Interior, and are deemed desirable and are not otherwise being studied;

(2) Specific mineral research and demonstration projects of industry-wide application, which could not otherwise be undertaken; and

(3) Expenses of planning and coordinating regional mining and mineral resources projects by two or more institutes.

(b) The Assistant Director will assemble from the Office and other offices, bureaus, and agencies of the Department of the Interior a listing of mining and mineral resources problems, including reclamation and enforcement. After consulting with the advisory committee and obtaining approval of the Director, the Assistant Director will make available to the institutes a list of topics for research. In special cases, studies not included on this list may be considered and approved if justified and deemed desirable under paragraphs (a) (2) or (3) of this section.

§ 890.8 Eligibility for scholarships and fellowships.

Under section 302 (b) and (c) of the Act, additional funds may be made available to the institute to:

(a) Provide opportunity for training individuals as mineral scientists and engineers, and

(b) Provide undergraduate scholarships, graduate fellowships, and postdoctoral fellowships for mining and mineral engineering and closely allied fields.

§ 890.9 Programs of institutes.

(a) It shall be the duty of each institute to plan and conduct or arrange for the conduct of:

(1) Competent research, investigations, demonstrations, and experiments of either a basic or practical nature, or both, in relation to mining and mineral resources, and

(2) Training of mining and mineral engineers and scientists through such research, investigations, demonstrations, and experiments.

(b) Such research, investigations, demonstrations, experiments, and training may include, without being limited to:

(1) The exploration, extraction, processing, development, and production of mineral resources;

(2) Mining and mineral technology;

(3) Supply and demand for minerals;

(4) Conservation and best use of available supplies of minerals; and

(5) The economic, legal, social, engineering, recreational, biological, geographical, ecological, and other aspects of mining, mineral resources and mineral reclamation.

§ 890.10 Applications for initial allotments to institutes.

(a) In order to obtain an initial allotment under section 301, an institute must submit to the Assistant Director an application (in six copies).

(b) The institute shall use and follow the standard form for Federal assistance and other procedures specified by the Office of Management and Budget Circular No. A-110, "Uniform Administrative Requirements for Grants and Agreements With Institutions of Higher Education, Hospitals and Other Non-Profit Organizations" (41 FR 32016; July 30, 1976). No preapplication is required.

(c) The institute shall include on form 424 in section IV of the standard application:

(1) Evidence that the institute conforms to each requirement or criterion listed in § 890.6 of this part;

(2) Evidence of the appointment by the governing authority of the institute of an officer to receive and account for all funds paid under the provisions of this title and to make annual reports to the Secretary on or before the first day of October of each year, on work accomplished and the status of projects underway, together

with a detailed statement of the amounts received under any provisions of this title during the preceding fiscal year and of its disbursements on schedules prescribed by the Secretary;

(3) Evidence that the institute has plans and will conduct, or will arrange for a component or components of the college or university with which it is identified, to conduct:

(i) Competent research, investigations, demonstrations and experiments of either a basic or practical nature, or both, in relation to mining and mineral resources research, and

(ii) Training of mining and mineral engineers and scientists through such research, investigations, demonstrations and experiments;

(4) Evidence that the institute has, or may reasonably be expected to have, the capability of doing effective work in one or more of the various mining and mineral resources programs specified in § 890.9 of this part, which evidence shall include:

(i) The proposed general plan of operation of the institute, showing its organization and a summary of the institute's program activities, by project or other appropriate headings, which includes information concerning the substantive character and the anticipated magnitude, in man-years, of proposed activities,

(ii) Description of the facilities to be utilized,

(iii) A list of staff personnel with specific details as to academic and professional training, research experience and other pertinent qualifications, and the time they will devote to research, training or other activities of the institute, and

(iv) The sources of non-Federal funds; and

(5) Evidence that the institute is giving due regard to:

(i) Mining and mineral resources research projects being conducted (or supported) by agencies of the Federal and State governments and other institutes,

(ii) The interrelation on the natural environment,

(iii) The varying needs and conditions of the respective States,

(iv) The advice and assistance as provided by the Secretary, and

(v) A statement that the institute is willing to enter into an agreement, in a form approved by the Secretary, that all information, uses, products, processes, patents, and other developments resulting from any scientific or technological research or development activity financed with funds supplied pursuant to this title will (with such exceptions and limitations as the Secretary may determine) be made available promptly to the general public.

§ 890.11 Applications for allotments after the first year.

(a) After the first fiscal year, in order to obtain subsequent allotments an institute shall submit to the Assistant Director a request for an annual allotment (in six copies) containing information and materials on Standard Form 424 to supplement any previously submitted application as may be needed to make it currently applicable and to reaffirm eligibility. Such requests shall be submitted on or before April 1 to be considered for grants commencing on or after July 1 of the same calendar year.

(b) The request shall include: (1) Evidence that, if any monies received by the authorized receiving officer of any institute under the provisions of this title shall by any action or contingency have been found by the Secretary to have been improperly diminished, lost or misapplied, they must be replaced by the institute concerned; and until so replaced, no subsequent appropriation shall be allotted or paid to the institute;

(2) An outline explaining any changes in its program planned by the institute during the forthcoming fiscal year;

(3) A financial plan relating expenditures to scheduled activity and rate of effort to be expended and indicating the times at which there will be need for specified amounts of allotted Federal funds; and

(4) Evidence that the institute's program is effective, giving due regard to mining and mineral resources problems specified above.

[43 FR 38559, Aug. 28, 1978, as amended at 45 FR 74681, Nov. 10, 1980]

§ 890.12 Applications for research grants.

(a) A separate application for a research grant under section 302 of the Act shall be submitted in six copies to the Assistant Director, at least one of which shall contain the original signatures of the principal investigator, of the relevant department head, and of an official authorized to commit the institution in business and financial affairs.

(b) The institute shall use and follow the standard form for Federal assistance and other procedures specified by Office of Management and Budget circular No. A-110, "Uniform Administrative Requirements for Grants and Agreements With Institutions of Higher Education, Hospitals and other Non-Profit Organizations" (41 FR 32016; July 30, 1976). No preapplication is required.

(c) The institute shall include on form 424 in section IV of the standard application evidence that the institute, conforms to each requirement or criterion listed in § 890.6 of this chapter.

(d) Such proposals must set forth for each project:

(1) The nature and scope of the project to be undertaken,

(2) The period during which it will be pursued,

(3) The names and qualifications of the senior professional personnel who will direct and conduct the project,

(4) The estimated costs of the project, with a breakdown of the costs per year,

(5) The importance of the project to the Nation, region, or State concerned, its relation to other known research projects theretofore pursued or being pursued and the anticipated applicability of the research results,

(6) The extent to which it will provide opportunity for the training of mining and mineral engineers and scientists,

(7) The extent of participation by nongovernmental sources in the project, and

(8) Assurance that no portion of any grant awarded under this section shall be applied to the acquisition by purchase or lease of any land or interests therein or the rental, purchase, construction, preservation, or repair of any building.

§ 890.13 Applications for scholarships and fellowships.

(a) Under section 302(c) of the Act, an institute may apply for a grant to provide undergraduate scholarships, graduate fellowships, and postdoctoral fellowships in mining and mineral resources and closely allied fields. In order to obtain a grant for such scholarships and fellowships, an institute must submit (in six copies) to the Assistant Director a plan for awarding this financial aid based on academic ability.

(b) The institute shall use and follow the standard form for Federal assistance required in § 890.10(b). No preapplication is required.

(c) The institute shall include on Form 424 in section IV of the standard application:

(1) Evidence that the institute has or is presently submitting a similar Form 424 for financial assistance under § 890.10 or § 890.11, and that such form has been supplemented where need be to make it currently applicable.

(2) Evidence of the appointment by the governing authority of the institute of a committee to supervise the awarding of scholarship and fellowship funds based on academic ability.

(d) The scholarship committee shall be required to submit, at the Assistant Director's request, a report of financial assistance. This report shall contain:

(1) Criteria used by the Committee to review applicants and award financial assistance,

(2) Statistical records showing number of applicants reviewed, major fields of interests, degree sought (undergraduate, graduate, doctoral, etc.) and amount of assistance requested;

(3) Brief accounting of individuals receiving assistance, including name, field of study, degree sought, and the amount of assistance awarded; and

(4) All other items relating to financial assistance that may be requested by the Assistant Director.

(e) The institute must assure full compliance with Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000d. An annual report of financial assistance provided and persons aided shall be included in the annual institute status report required by § 890.17.

(f) All individuals, departments, and subdivisions of a university that receive assistance under § 890.13 shall be subject to the patent requirements set forth in § 890.16(f).

(g) An institute may plan, conduct and award scholarship and fellowship funds in conjunction with other departments or subdivisions of its university or with other noninstitute organizations or universities under the following conditions:

(1) The institute scholarship committee retains supervisory control over the use of their funds;

(2) The committee must determine that all programs to be funded contribute to the solution of mining and mineral resources problems and have been approved by the officer appointed under § 890.10(c)(2);

(3) All organizations, universities, and individuals who receive assistance through this section shall be subject to the patent provisions in § 890.16(f);

(4) All participating organizations, universities, and individuals shall agree not to apply any portion of the funds to the acquisition by purchase or lease of any land or interests therein or the rental, purchase, construction, preservation, or repair of any building; and

(5) All participating organizations, universities, and individuals agree to supply all interim and final reports as may be required by the institute scholarship committee or the institute officer appointed under § 890.14(a).

§ 890.14 Permissible transfers of research and institute assistance funds.

(a) Under section 303(b) of the Act, institutes are authorized and encouraged to plan and conduct programs under Title III in cooperation with each other, with other components of the same college or university or with such other agencies and individuals as may contribute to the solution of the mining and mineral resources problems involved. Institute funds received under §§ 890.10 and 890.11 (institute assistance), 890.12 (research grants) and 890.13 (scholarships and fellowships) may be utilized by the institutes to administer and pay for programs conducted by noninstitute organizations, universities or individuals.

(b) Institutes may utilize their funds provided by §§ 890.10, 890.11, and 890.12 to pay for other projects under the following limitations:

(1) The officer appointed under § 890.10(c)(2), or his designated representative, shall administer, conduct, and supervise all noninstitute funded programs.

(2) All proposals to fund noninstitute activities shall be specifically set forth in all grant proposal applications required under §§ 890.10, 890.11, 890.12, and 890.13.

(3) Neither the approval of a program nor the payment of all or part of the program funds by the administering institute shall commit or obligate the institute, over and above those funds in the amount and for the purposes stated in the funding agreement, to award any continuation of funds or to enter into any other grant or funding agreement, including agreements to cover cost overruns.

(4) No portion of any funds provided by the institute will be applied to the acquisition by purchase or lease of any land or interests therein or the rental, purchase, construction, preservation, or repair of any building.

(5) Participating organizations, universities or individuals shall supply all reports as are requested by the institute scholarship committee or by the supervising officer appointed in paragraph (a) of this section.

(6) All organizations, universities or individuals funded under this section are subject to the patent requirements under § 890.16(f).

(7) Copies of all agreements for funding of programs conducted by noninstitute organizations, universities, or individuals shall be attached in an appendix to the final annual reports submitted by institutes under § 890.17(a).

(c) Funds authorized under § 890.13 may be used to fund scholarship and fellowship programs conducted by noninstitute universities or organizations under the conditions of § 890.13(g).

§ 890.15 Approval of allotments and award of grants.

(a) Upon receipt of an application for an allotment grant, contract or other financial assistance, the Assistant Director shall determine whether the submission conforms to the requirements of §§ 890.10, 890.11, 890.12, or 890.13 as appropriate. Nonconforming submissions will be returned to the institute with statements of the reasons thereof.

(b) The Director or his designated representative, may approve proposals submitted under these regulations after determining:

(1) That a reasonable relationship exists between the cost to the Government and the probable results to be achieved,

(2) That a college or university as the institute for the State, meets all the requirements for eligibility prescribed in § 890.6, including the evidence of the availability of matching non-Federal funds,

(3) That the applicant has expressed willingness and is legally authorized to enter into agreements acceptable to the Secretary, including an agreement for public availability of research results as provided in § 890.10(c)(5)(v), and

(4) That the State and the university have shown a good-faith effort to expand and improve the mineral institute.

(c) The Director or his designated representative shall approve a research grant on the basis of its overall merits, including consideration of:

(1) The need for the knowledge it is expected to produce when completed,

(2) The opportunity it provides for the training of mining and mineral engineers and scientists,

(3) The probability that it will be pursued with competence and completed within a reasonable time,

(4) Freedom from unnecessary duplication of work being performed by others,

(5) Evidence that the proposed projects could not be undertaken without the aid of the proposed grant,

(6) Evidence that previous research projects have been performed in a satisfactory manner and completed on schedule,

(7) Evidence that the proposal for a research project award meets all the requirements set forth in §§ 890.7 and 890.12, and

(8) Evidence that the proposal for a research project was properly endorsed by duly authorized officials of the applicant institute as well as by the principal investigators involved.

§ 890.16 Other Federal requirements.

Each institute receiving assistance in accordance with these regulations must comply with the following provisions which are conditions of each grant:

(a) The requirements of Title VI of the Civil Rights Act of 1964 as amended (42 U.S.C. 2000d) which provides that no person in the United States shall, on the ground of race, color, religion, sex or national origin, be excluded from participation in, denied benefits of, or subjected to discrimination under, any program or activity receiving Federal financial assistance and the implementing regulations issued by the Secretary of the Interior with the approval of the President (43 CFR Part 17).

(b) The Hatch Act, 5 U.S.C. 1501 *et seq.* as amended, which relates to certain political activities of certain State and local employees. State and local government grantees must ensure compliance on the part of their employees who are covered by the Hatch Act. A State or local officer or employee is covered by the Hatch Act on political activity if his principal employment is in connection with an activity which is financed in whole or part by loans or grants made by the United States or a Federal agency. He is subject to the Act, if as a normal and foreseeable incident to his principal job or position, he performs duties in connection with an activity financed in whole or in part by Federal loans or grants. Specifically excluded is an individual who exercises no functions in connection with that activity or an individual employed by an educational or research institution, establishment, agency, or system which is supported in whole or in part by a State or political subdivision thereof, or by a recognized religious, philanthropic, or cultural organization.

(c) Title IX of the Education Amendments of 1972, 20 U.S.C. 1681, *et seq.*, which provides that no person in the United States shall, on the basis of sex, be excluded from participation in, denied the benefits of or subjected to discrimination under any education program or activity receiving Federal financial assistance.

(d) Executive Order 11246, dated September 24, 1965, as amended by Executive Order 11375, which requires that employees or applicants for employment not be discriminated against because of race, creed, color, sex, or national origin.

(e) The Clean Air Act (42 U.S.C. 7401, *et seq.*, as amended by Pub. L. 91-604 and 95-95) and the Federal Water Pollution Control Act (33 U.S.C. 1251 *et seq.*, as amended by Pub. L. 92-500), which provide for compliance with clean air and water standards at facilities used for the performance of projects supported with Federal funds.

(f) Section 504 of the Rehabilitation Act of 1973, as amended by Executive Order 11914, nondiscrimination with respect to the handicapped in federally assisted programs.

(g) Institutes shall comply with the requirements of Title V of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*) for all projects approved by the Director involving coal or lignite.

(h) All uses, products, processes, patents, and other developments resulting from any research, demonstration or experiment performed under grants awarded pursuant to this chapter of these regulations shall be made available promptly to the public, with such exception, or limitation, if any, as the Secretary may find necessary in the public interest. Nothing contained in this limitation shall deprive the owner of any background patent relating to any such activities of any rights which that owner may have under that patent. In carrying out this provision, the Office will make use of and adhere to the Statement of Government Patent Policy promulgated by the President (36 CFR 16887, August 26, 1971), as implemented by the Federal Procurement Regulations (41 CFR 1-9.107) and the Interior Procurement Regulations (Interior Procurement Bulletin No. 11, revised; March 2, 1976).

(i) No portion of any grant awarded under § 890.6 or § 890.7 of this chapter shall be applied to the acquisition by purchase or lease of any land or interests therein or to the rental, purchase, construction, preservation, or repair of any buildings.

§ 890.17 Progress and accomplishment reports.

(a) *Annual institute status reports.*—On or before the first day of October of each year, the officer of each institute who has been duly appointed by its governing authority to receive and account for all funds shall make an annual report to the Director on work accomplished and the status of projects underway, together with a detailed statement of the amounts received under any provision of this chapter during the preceding fiscal year, and of its disbursements on schedules prescribed by the Director.

(b) *Quarterly technical progress reports for institute projects.*—It shall be the duty of each institute to make a brief quarterly technical report on the progress being made on the research, investigations, demonstrations, experiments, and training that it conducts under the provisions of section 301(b). In general, this report will be a summary of the technical activities of the institute.

(c) *Reports on research projects.*—The grant agreement for each project funded under section 302 of this title shall specify the kind, frequency, and content of reports to be submitted on research projects. In addition, each specific mineral research and demonstration project of industrywide application and research into any aspect of mining and mineral resource problems shall submit a quarterly technical report of progress made to date in an annual report which shall include—

(1) A description of research accomplished and the findings, results, and conclusions relating thereto,

(2) Supplementary information suitable for project demonstration purposes,

(3) A listing of project-related publications or reports issued and papers presented (with copies of such publications being attached to each copy of the annual report), and

(4) Statements of project work remaining to be accomplished.

(d) *Final report.*—Upon completion of a research study, there shall be prepared a cumulative final report including recommendations, conclusions, and applicability of the findings to the Office of Surface Mining, the Department of the Interior, and the mining or mineral resource issues of the Nation. The final report shall be prepared in accordance with ANSI Z39.18-1974, American national standard guidelines for format and production of scientific and technical reports, and will be required for each project so that the Secretary may promptly disseminate the findings of these publicly supported projects. The technical project officer assigned to each grant will provide detailed guidance about the preparation, format, and submission of required technical reports.

§ 890.18 Fiscal and accounting.

(a) Grant awards under §§ 890.6 and 890.7 shall be subject to the uniform administrative requirements including the financial management systems and financial reporting requirements of the current edition of Office of Management and Budget circular No. A-110 and all attachments thereto.

(b) Advances will be made by the letter of credit method provided the grantee meets all of the requirements specified in attachment I to the Office of Management and Budget circular No. A-110. If the grantee meets all of the specified requirements, but the total grant amount is less than $120,000, advance payments will be made by Treasury check. If the grantee does not meet the specified requirements, payment will be made by reimbursement with Treasury check. Vouchers may be submitted monthly or any regular less frequent period such as quarterly, at the option of the grantee.

§ 890.19 Audits and inspections.

(a) In addition to the internal audits which the grantee will perform or have performed in accordance with specifications in attachment F to the Office of Management and Budget circular No. A-110, representatives of the Secretary of the Interior and of the Comptroller General of the United States may conduct onsite audits and inspections of grantee which have received Federal funds under this title.

(b) Audits conducted at the direction or on behalf of the Secretary of the Interior will extend to a determination and appropriate finding of fact concerning compliance with the provisions of the grant, the regularity and accuracy of financial transactions and records, the adequacy of property accountability and control, and the reliability of financial reporting.

(c) *Inspections.*—In relation to the substantive scientific and administrative operations of grantees, the Secretary of the Interior may, with such personnel as he considers qualified and with such procedures as he determines to be suitable, perform inspections of activities authorized and financed pursuant to these regulations. Such inspections will cover acceptability of progress, consistency with approved plans and other factors he deems important to enable him to discharge his responsibilities for achievements consistent with purposes of this title.

§ 890.20 Filing deadlines and amounts of grants.

(a) For the Federal fiscal year ending September 30, 1978, all of the designated institutes determined to be eligible for funding under § 890.6 will be notified by the Director, as soon as practical after designation, as to the filing deadline for financial assistance under §§ 890.10, 890.12, and 890.13 and as to the amount of funds to be made available for each type of assistance.

(b) Grants for the initial year and all future years may be awarded by the Office based on the number of eligible institutes and available funds.

(c) In all future years (beginning in fiscal year 1979), the Director will advise, on January 1 of each year, all designated institutes, as determined under § 890.6, concerning the maximum amount of funds available under §§ 890.10, 890.12, and 890.13.

(d) Beginning in fiscal year 1979, the deadline for filing applications for funding under § 890.10 (new institute allotments), § 890.11 (renewal of allotments), § 890.12 (research grants), and § 890.13 (scholarships and fellowships) will be March 31 of each year.

§ 890.21 Grant agreements.

(a) If the Director approves an institute's application for funding, the Office shall prepare a grant agreement which includes—

(1) The approved scope of the program to be covered by the grant;

(2) The approved budget, including the Federal share;

(3) Commencement and completion dates for the segment of the program covered by the grant and for major phases of the program to be completed during the grant period. Allotment grants shall commence on July 1 and shall terminate on June 30 of the following year.

(b) The Assistant Director shall transmit four copies of the grant agreement by certified mail, return receipt requested, to the institute for signature. The institute shall execute the grant agreement and return all copies of it within 3 calendar weeks after receipt, or within an extension of such time that may be granted by the Assistant Director.

(c) The Director or his designated representative shall sign the grant upon its return from the institute and return one copy to the institute. The grant is effective and constitutes an obligation of Federal funds in the amount and for the purpose stated in the grant agreement at the time that the Director signs the agreement.

(d) Neither the approval of a program nor the award of any grant will commit or obligate the United States to award any continuation grant or enter into any grant amendment, including grant increases to cover overruns.

[43 FR 38559, Aug. 28, 1978, as amended at 45 FR 74681, Nov. 10, 1980]

§ 890.22 Grant amendments.

(a) A grant amendment is a written alteration in the grant amount, grant terms or conditions, budget or period or other administrative, technical, or financial agreement whether accomplished on the initiative of the institute or the office, or by mutual action of the agency and the office.

(b) The institute shall promptly notify the Assistant Director in writing by certified mail, return receipt requested, of events or proposed changes which may require a grant amendment, such as—

(1) Rebudgeting,

(2) Changes which may affect the approved scope or objective of a program, or

(3) Changes which may increase or substantially decrease the total cost of a program;

(c) The Director or his designated representative shall approve or disapprove each proposed amendment within 30 days of receipt, or as soon thereafter as possible, and shall notify the institute in writing of the approval or disapproval of the amendment; and

(d) The grant amendment establishes the effective date of the action. If no date is specified in the grant amendment, then the date the Director or his designated representative signs the amendment will be the effective date of the action.

§ 890.23 Grant reduction and termination.

(a) *Conditions for reduction or termination.* (1) If an institute violates the terms of a grant agreement, the Director may reduce or terminate the grant.

(2) If an institute fails to implement, enforce, or maintain an approved program or agreement, the Director shall terminate the institute's grant or any research grant.

(3) If an institute fails to implement or maintains only a part of the program, the Director shall reduce the grant to the amount of the program being operated by the institute.

(4) If an institute is not in compliance with the following nondiscrimination provisions, the Director shall terminate the grant—

(i) Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) Nondiscrimination in Federal Assisted Programs, which provides that no person in the United States shall on the grounds of race, color, or national origin be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program or activity receiving Federal financial assistance, and the implementing regulations at 43 CFR Part 17;

(ii) Executive Order 11246, as amended by Executive Order 11375, Equal Employment Opportunity, requiring that employees or applicants for employment not be discriminated against because of race, creed, color, sex, or national origin, and the implementing regulations at 41 CFR Part 60;

(iii) Section 504 of the Rehabilitation Act of 1973, as amended by Executive Order 11914, nondiscrimination with respect to the handicapped in federally assisted programs;

(iv) Title IX of the Education Amendments of 1972, 20 U.S.C. 1681, *et seq.*, which provides that no person in the United States shall, on the basis of sex, be excluded from participation in, denied the benefits of, or subjected to discrimination under any educational program or activity receiving Federal financial assistance.

(b) *Grant reduction and termination procedures.* (1) The Director shall give at least 10 days' written notice to the institute by certified mail, return receipt requested, of intent to reduce or terminate a grant. The Director shall include in the notice the reasons for the proposed action and the proposed effective date of the action.

(2) The Director shall afford the institute opportunity for consultation and remedial action prior to reducing or terminating a grant.

(3) The Director shall notify the institute of the termination or reduction of the grant in writing by certified mail, return receipt requested.

(4) Upon termination the institute shall refund or credit to the United States that portion of the grant money paid or owed to the institute and allocated to the terminated portion of the grant. However, any portion of the grant that is required to meet commitments made prior to the effective date of termination shall be retained by the institute.

(5) The institute shall reduce the amount of outstanding commitments insofar as possible and report to the Assistant Director the uncommitted balance of funds awarded under the grant.

(6) Upon notification of intent to terminate, the institute shall not make any new commitments without the approval of the Director.

(7) The Director may allow termination costs as determined by applicable Federal cost principles listed in Federal Management circular No. 74-4.

(c) *Appeals.* An institute may appeal the decision to reduce or terminate a grant to the Director within 30 days. An institute shall include in an appeal—

(1) The decision being appealed, and

(2) The facts which the institute believes justify a reversal or modification of the decision. The Director shall act upon appeals within 30 days of their receipt, or as soon thereafter as possible, and his decision shall be final for the purposes of further appeal.

SUBCHAPTER T—PROGRAMS FOR THE CONDUCT OF SURFACE MINING OPERATIONS WITHIN EACH STATE

PART 900—INTRODUCTION

Sec.
900.1 Scope.
900.2 Objectives.
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900.11 Organization of this subchapter.
900.12 State regulatory programs.
900.13 Federal programs and Federal coal exploration programs.
900.14 Abandoned mine land programs.
900.15 Federal lands program cooperative agreements.

AUTHORITY: Secs. 102, 201, 405, 503, 504, 505 and 523 of Pub. L. 95-87 (30 U.S.C. 1202, 1211, 1235, 1253, 1254, and 1273).

SOURCE: 48 FR 6334, Feb. 11, 1983, unless otherwise noted.

§ 900.1 Scope.

This part sets forth the purpose and organization of Parts 901-955 of this subchapter.

[51 FR 19461, May 29, 1986]

§ 900.2 Objectives.

The objective of this part is to provide an introduction to the synopsis of the approved State programs, the Abandoned Mined Lands Reclamation programs, the cross referencing provisions of Federal programs and the full texts of State and Federal cooperative agreements for regulation of mining on Federal lands. The introduction explains the content and authority of the permanent regulatory programs.

§ 900.4 Responsibilities.

(a) Each State that has surface coal mining and reclamation operations or coal exploration activities on non-Federal, non-Indian lands must have either an approved State program or a promulgated Federal program as required by Title V of the Act and 30 CFR Chapter VII, Subchapter C. Approval of a State program and promulgation of a Federal program are described in the paragraphs below.

(b) Under section 503 of the Act and 30 CFR Parts 730, 731 and 732 a State in which there are coal exploration activities or surface mining and reclamation operations must submit a State program to the Secretary for approval if it wishes to assume exclusive regulatory jurisdiction on non-Federal and non-Indian lands within its borders. The State programs must meet the requirements of the Act and 30 CFR Chapter VII, Subchapter C.

(c) Pursuant to section 504 of SMCRA and 30 CFR 736.11, OSM must promulgate and implement a Federal program in each State in which the Director reasonably expects coal exploration or surface coal mining and reclamation operations to exist on non-Federal and non-Indian lands at any time before June, 1985, and either: (1) The State does not submit a State program, (2) the Secretary of the Interior finally disapproves the program submitted by the State, or (3) the Secretary of the Interior withdraws approval of the State program.

(d) Under section 405 of SMCRA and 30 CFR Part 884, each State having within its borders coal mined lands eligible for reclamation under Title IV of SMCRA, may submit to the Secretary a State Reclamation Plan, demonstrating its capability for administering an abandoned mine reclamation program. Title IV provides that the Secretary may approve the plan once the State has an approved regulatory program under Title V of SMCRA. If the Secretary determines that a State has developed and submitted a program for reclamation and has the necessary State legislation to implement the provisions of Title IV, the Secretary shall grant the State exclusive responsibility and authority to implement the provisions of the approved plan. Section 405 of SMCRA (30 U.S.C. 1235) contains the requirements for State reclamation plans.

(e) States with approved programs may enter into cooperative agreements with OSM in order to become the regulatory authority for coal mining on Federal lands, in accordance with 30 CFR Chapter VII, Subchapter D.

§ 900.11 Organization of this subchapter.

Parts 901 through 950 are reserved for each State alphabetically. The program applicable within each State is codified in the part for that State. In addition, Part 955 establishes rules pursuant to Part 850 of this chapter for the training, examination and certification of blasters by OSM for surface coal mining operations in States with Federal programs and on Indian lands.

[51 FR 19461, May 29, 1986]

§ 900.12 State regulatory programs.

(a) Upon approval of a State regulatory program the Secretary will publish a final rule to be codified under the applicable part number assigned to the State. The full text will not appear below. Notification of the approval of the program and the dates on which any amendments were submitted will appear. Also included below are the addresses of OSM Headquarters, field and State Regulatory Authority offices where copies of the State programs are available for inspection and copying.

(b) Provisions of approved State regulatory programs or permits issued pursuant to an approved State regulatory program may be enforced by the Secretary or his authorized agents pursuant to sections 504(b) and 521 of the Act and Part 842 of this chapter.

§ 900.13 Federal programs and Federal coal exploration programs.

The rules for each Federal program and Federal coal exploration program are codified below under the assigned part for the particular State. Rules governing the training, examination and certification of blasters for surface coal mining operations in States with Federal programs are codified in Part 955, and referenced by each Federal program.

[51 FR 19461, May 29, 1986]

§ 900.14 Abandoned mine land programs.

Programs for reclamation of abandoned mine lands are codified under the applicable part for the State. The date of submittal and approval and the addresses at which copies of the program are available appear below in the applicable part for each State.

§ 900.15 Federal lands program cooperative agreements.

The full text of any State and Federal cooperative agreement for the regulation of coal exploration and mining on Federal lands is published below under the applicable part. In addition, those requirements of a State program which are applicable on Federal lands in the State shall be specified.

PART 901—ALABAMA

Sec.
901.1 Scope.
901.10 State regulatory program approval.
901.15 Approval of regulatory program amendments.
901.20 Approval of the Alabama abandoned mine land reclamation plan.
901.30 State-Federal cooperative agreement.

AUTHORITY: Pub. L. 95-87; 30 U.S.C. 1201 *et seq.*

§ 901.1 Scope.

This part contains all rules applicable only within Alabama that have been adopted under the Surface Mining Control and Reclamation Act of 1977.

[47 FR 22057, May 20, 1982]

§ 901.10 State regulatory program approval.

The Alabama State program, as resubmitted on January 11, 1982, and clarified in a meeting with OSM on April 9, 1982, (See Administrative Record No. AL-347) and in a letter to the Director, OSM, of May 14, 1982, is conditionally approved, effective (date of publication). Beginning on that date, the Alabama Surface Mining Commission shall be deemed the regulatory authority in Alabama for all surface coal mining and reclamation operations and all exploration operations on non-Federal and non-Indian lands. Only surface coal mining and reclamation operations on non-Federal and non-Indian lands shall be subject to the provisions of the Alabama permanent regulatory program. Copies of the approved program, together with copies of the letter of the Alabama Surface Mining Commission agreeing to the conditions of 30 CFR 901.11, are available for inspection at:

Alabama Surface Mining Reclamation Commission, Central Bank Building, 2nd Floor, 811 Second Avenue, Jasper, AL 35501

Alabama Surface Mining Reclamation Commission 100 Third Street, Fort Payne, AL 35967

Office of Surface Mining, Birmingham Field Office, 228 West Valley Avenue, Room 302, Birmingham, AL 34209

Office of Surface Mining, Administrative Record, Room 5315, 1100 L Street, N.W., Washington, D.C. 20240

[47 FR 22057, May 20, 1982, as amended at 49 FR 7805, Mar. 2, 1984]

§ 901.15 Approval of regulatory program amendments.

(a) The following amendments were approved effective July 27, 1983.

(1) Alabama's recodification of its rules, as submitted on November 24, 1982.

(b) The following amendments were approved effective [*March 2, 1984*].

(1) Alabama revised statute and regulations, submitted on August 29, 1983, as modified on December 22, 1983, to meet conditions (a), (b), (c), (f), (g), (h), (i), (j), (k), (l) and (m) (1)-(4) and (6). These revisions were made to Section 9-16-95(f) of Alabama's code and the following sections of Alabama rules: 880-X-2A-.06(xx), 880-X-2A-.06(www)(5), 880-X-10B-.06(a), 880-X-8F-.08(1)(d), 880-X-8I-.07(1)(d), 880-X-8F-.08(p), 880-X-8I-.07(p), 880-X-8D-.05(1)(b), 880-X-8G-.05(1)(b), 880-X-8K-.05(4)(a), 880-X-8C-.09, 880-X-8K-.12(1) (a) and (b), 880-X-8J-.11, 880-X-10J, 880-X-8J-.09(4)(i), 880-X-11C-.02 (1)(b) and (2)(b), 880-X-2A-.06(yy), 880-X-2A-.06(fff), 880-X-10G-.01, 880-X-10G-.07(a), and 880-X-8D-.05(4).

(2) Other Alabama revised statutory sections submitted on August 29, 1983, to revise sections 9-16-93(f), 9-16-94(a), 9-16-75, 9-16-79(1)(a), 9-16-87(d), 9-16-92(a)(4), 9-16-94(e), 9-16-89(h)(2), 9-16-90(b)(10)(b.1), 9-16-99(2) and 9-16-105.

(3) Other Alabama revised regulatory sections, submitted on August 29, 1983, to revise sections 880-X-2A-.06(kkkkkk)(1), 880-X-5A-.02(1)(i), 880-X-5A-.17(1)(n), 880-X-5A-.18, 880-X-5A-.36, 880-X-8E-.06(2), 880-X-8H-.06(2), 880-X-8E-.06(5)(a), 880-X-8H-.06(5)(a), 880-X-8F-.07, 880-X-8F-.08(2), 880-X-8I-.07(2), 880-X-8F-.09(2)(e), 880-X-8I-.08(2)(e), 880-X-8G-.05(4), 880-X-8I-.09, 880-X-10A-.03, 880-X-10C-.03, 880-X-10C-.30-35, 880-X-10D-.03, 880-X-10D-.28-32, 880-X-10C-.34-4(e)(2), 880-X-10D-.31-4(e)(2), 880-X-10C-.64(3), 880-X-10D-.62(3), 880-X-8N-.07, 880-X-8N-.07(c), 880-X-8N-.13(d), 880-X-8N-.08, and 880-X-8N-.09.

(c) The following amendments were approved effective July 5, 1984:

(1) Alabama revised regulations, submitted on November 28, 1983, as modified on May 3, 1984. These revisions were made to the following sections of Alabama rules:

880-X-8C-.06, 880-X-10C-.36, 880-X-10D-.33, 880-X-10C-.13,
880-X-10D-.13, 880-X-10C-.17, 880-X-10D-.17, 880-X-10C-.20,
880-X-10D-.20, 880-X-10C-.27, 880-X-10D-.25.

(2) Alabama revised systems, Chapter V, §§ 731.14(f) and 731.14(g)(9), including the Memorandum of Understanding between the Alabama Department of Environmental Management and the Alabama Surface Mining Commission, signed January 12, 1984.

(d) The following amendment submitted to OSM on January 9, 1984 as modified on May 3, 1984 is approved effective September 27, 1984: Alabama's blaster certification program, as contained in the Alabama regulations at: 880-X-10C-.30(c), 880-X-10D-.28(3) and 880-X-12A-.01 through 880-X-12A-.08, and all other items as submitted by Alabama on January 9, 1984, and May 3, 1984.

(e) The trial period for Alabama's excess spoil plan is further extended from August 20, 1984, to August 20, 1989. The trial study is extended this period with the following stipulations:

(1) The Director, at his discretion, may terminate the trial study period at any time during the extended period, if sufficient data becomes available. Upon termination of the trial study period and OSM's analysis of the data, the Director may then ap-

prove or disapprove the subject excess spoil provisions.

(2) At any time during the trial period the Director may, at his discretion, place a moratorium on new permit applications which include consideration of the excess spoil provisions.

(3) The State is required to continue to report to the OSM Birmingham Field Office annually on August 20, on the status of all permits and permit applications which include consideration under the excess spoil provisions.

(f) The following amendment is approved effective July 19, 1985. Regulations concerning exemptions for coal extraction incidental to the extraction of other minerals, contained in Alabama Surface Mining Commission rules at Sub-chapter 880-X-2E as submitted to OSM on May 22, 1985.

(g) The amendment to the Alabama permanent regulatory program submitted to OSM on April 2, 1985, to revised approved staffing levels is approved effective December 3, 1985.

[48 FR 34027, July 27, 1983, as amended at 49 FR 7805, Mar. 2, 1984; 49 FR 27505, July 5, 1984; 49 FR 38099, Sept. 27, 1984; 50 FR 21255, May 23, 1985; 50 FR 29380, July 19, 1985; 50 FR 49542, Dec. 3, 1985]

§ 901.20 Approval of the Alabama abandoned mine land reclamation plan.

The Alabama Abandoned Mine Land Reclamation Plan as submitted on May 8, 1981, is approved. Copies of the approved Plan are available at the following locations:

Office of Surface Mining Reclamation and Enforcement, Region II, 503 Gay Street—Suite 500, Knoxville, Tennessee 37902

Alabama Department of Industrial Relations, Montgomery, Alabama 36101

Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 5315 1100 "L" Street, NW., Washington, D.C. 20240

[47 FR 22062, May 20, 1982]

§ 901.30 State-Federal cooperative agreement.

The Governor of the State of Alabama and the Secretary of the Department of the Interior (Secretary) enter into a Cooperative Agreement (Agreement) to read as follows:

ARTICLE I: INTRODUCTION, PURPOSE AND RESPONSIBLE AGENCIES

A. *Authority:* This agreement is authorized by sectoin 523(c) of the Surface Mining Control and Reclamation Act of 1977 (the Act), 30 U.S.C. 1273(c), which allows a State with a permanent regulatory program approved by the Secretary under 30 U.S.C. 1253, to elect to enter into an Agreement for State regulation of surface coal mining and reclamation operations on Federal lands. This Agreement provides for State regulation of surface coal mining and reclamation operations in Alabama subject to the Federal lands program (30 CFR Parts 740-746), consistent with State and Federal Acts governing such activities, and the Alabama State Program (Program).

B. *Purpose:* The purposes of this Agreement are to (a) foster Federal-State cooperation in the regulation of surface coal mining and reclamation operations; (b) minimize intergovernmental overlap and duplication; and (c) provide uniform and effective application of the Program on all lands in Alabama in accordance with the Act, the Program, and this Agreement.

C. *Responsible Administrative Agencies:* The Alabama Surface Mining Commission (ASMC) shall be responsible for administering this Agreement on behalf of the Governor. The Office of Surface Mining (OSM) shall administer this Agreement on behalf of the Secretary.

ARTICLE II: EFFECTIVE DATE

After it has been signed by the Secretary and the Governor, this Agreement shall be effective 30 days after publication in the FEDERAL REGISTER as a final rule. This Agreement shall remain in effect until terminated as provided in Article XI.

ARTICLE III: DEFINITIONS

The terms and phrases used in this Agreement which are defined in the Act, 30 CFR 700, 701, and 740, the approved State Program and the State Act, and in the rules and regulations promulgated pursuant to those Acts, shall be given the meanings set forth in said definitions. Where there is a conflict between the above referenced State and Federal definitions, the definitions used in the approved State Program will apply, except in the case of a term which defines the Secretary's continuing responsibilities under the Act and other laws.

ARTICLE IV: APPLICABILITY

In accordance with the Federal lands program in 30 CFR Part 745, the laws, regulations, terms and conditions of the Program are applicable to lands in Alabama subject to the Federal lands program except as otherwise stated in this Agreement, the Act, 30

CFR 745.13, or other applicable laws or regulations.

ARTICLE V: GENERAL REQUIREMENTS

The Governor and the Secretary affirm that they will comply with all the provisions of this Agreement.

A. *Authority of State Agency:* ASMC has and shall continue to have the authority under State law to carry out this Agreement.

B. *Funds:* Upon application by ASMC and subject to appropriations, OSM shall provide the State with the funds to defray the costs associated with carrying out responsibilities under this Agreement as provided in section 705(c) of the Act and 30 CFR 735.16. Such funds shall cover the full cost of carrying out these responsibilities provided that such cost does not exceed the estimated cost the Federal government would have expended in regulating surface coal mining operations on Federal lands in Alabama in the absence of an agreement. If the State requests funds and sufficient funds have not been appropriated to OSM, OSM and the ASMC shall promptly meet to decide on appropriate measures that will insure that mining operations are regulated in accordance with the Program. If agreement cannot be reached, then either party may terminate the Agreement in accordance with 30 CFR 745.15. Funds provided to the State under this Agreement shall be adjusted in accordance with Office of Management and Budget Circular A-102, Attachment E.

C. *Reports and Records:* ASMC shall make annual reports to OSM containing information with respect to compliance with the terms of this Agreement, pursuant to 30 CFR 745.12(d). Upon request, ASMC and OSM shall exchange information developed under this Agreement, except where prohibited by Federal law.

OSM shall provide ASMC with a copy of any final evaluation report prepared concerning State administration and enforcement of this Agreement.

D. *Personnel:* ASMC shall have the necessary personnel to fully implement this agreement in accordance with the provisions of the Act and the approved State Program.

E. *Equipment and Laboratories:* ASMC will assure itself access to equipment, laboratories, and facilities with which all inspections, investigations, studies, tests, and analyses can be performed which are necessary to carry out the requirements of the Agreement.

F. *Permit Application Fees and Civil Penalties:* The amount of the fee accompanying an application for a permit shall be determined in accordance with Section 15 of the Alabama Surface Mining Control and Reclamation Act of 1981, Section 880-X-8B-.07 of the State regulations, and the applicable provisions of the State Program and Federal law. All permit fees and civil penalties collected from operations on Federal lands will be retained by the State and shall be deposited with the State Treasurer in the Alabama Surface Mining Fund. The financial status report submitted pursuant to 30 CFR 735.26 shall include the amount of fees collected during the prior State fiscal year.

ARTICLE VI: REVIEW OF PERMIT APPLICATION PACKAGE

A. *Submission of Permit Application Package:* ASMC and the Secretary shall require an operator proposing to conduct surface coal mining operations on Federal lands covered by this Agreement to submit a permit application package (PAP) in an appropriate number of copies to ASMC. ASMC shall furnish OSM with an appropriate number of copies of the PAP. The PAP shall be in the form required by ASMC and include any supplemental information required by OSM or the Federal land management agency. At a minimum, the PAP shall include the information necessary for ASMC to make a determination of compliance with the State Program and for the appropriate Federal agency to make a determination of compliance with applicable requirements of Federal laws and regulations for which it is responsible.

B. *Review Procedures Where Leased Federally-Owned Coal Is Not Involved:*

1. ASMC shall assume primary responsibility for the analysis, review and approval or disapproval of the permit application component of the PAP required by 30 CFR 740.13 for surface coal mining and reclamation operations under the Federal lands program in Alabama not requiring a mining plan under 30 CFR 746.11. ASMC shall be the primary point of contact for operators regarding decisions on the PAP and will be responsible for informing the applicant of determinations.

2. Upon receipt of a PAP that involves surface coal mining and reclamation operations on Federal lands not containing leased Federal coal, ASMC shall (1) transmit a copy of the complete PAP to the Federal land management agency with a request for review pursuant to 30 CFR 740.13(c)(4), and (2) provide OSM with a complete copy of the PAP and any additional information necessary to allow OSM to determine whether the operations are prohibited or limited by the requirements of section 522(e) (1) or (2) of the Federal Act (30 U.S.C. 1272(e)) and 30 CFR Part 761 with respect to areas designated therein by Congress as unsuitable for mining. Except as specified by paragraph 5 of this article, ASMC shall be responsible for obtaining, in a timely manner, the views and determinations of any other Federal

agencies with jurisdiction or responsibility over Federal lands affected by a PAP in Alabama.

3. OSM will provide technical assistance to ASMC when requested if available resources allow and will process requests for determinations of compatibility and valid existing rights under 30 CFR Part 761 relating to areas designated by Congress under section 522(e)(1) or (2) as unsuitable for mining. OSM will be responsible for ensuring that any information OSM receives from an applicant is promptly sent to ASMC. OSM shall have access to ASMC files concerning mines on Federal lands. The Secretary reserves the right to act independently of ASMC to carry out his responsibilities under laws other than the Federal Act. A copy of all resulting correspondence with the applicant that may have a bearing on decisions regarding the PAP shall be sent to the State.

4. ASMC shall review the PAP for compliance with the Program.

5. Prior to making a decision on a PAP for proposed surface coal mining and reclamation operations for which there is no other concurrent Secretarial action that would trigger compliance with Section 7 of the Endangered Species Act, 16 U.S.C. 1536, ASMC shall obtain the written concurrence of OSM regarding the effect the proposed operations would have on threatened and endangered species and critical habitat in the area affected by the proposed operations, and shall include in any permit that is issued for such operations any terms or conditions which OSM may require to avoid the likelihood of actions which would jeopardize the continued existence of any such species or result in the destruction or adverse modification of its critical habitat.

6. The permit issued by ASMC shall incorporate any terms or conditions imposed by the Federal land management agency, including conditions relating to post-mining land use, and shall condition the initiation of surface coal mining and reclamation operations on compliance with the requirements of the Federal land management agency. After issuing the decision on the PAP, ASMC shall send a notice to the applicant, the Federal land management agency, and OSM with a copy of the permit and written findings.

C. *Review Procedures Where Leased Federally-Owned Coal is Involved:*

1. ASMC shall assume primary responsibility for the analysis, review and approval or disapproval of the permit application component of the PAP for surface coal mining and reclamation operations on Federal lands in Alabama where a mining plan is required by 30 CFR 746.11. OSM, as requested, shall assist the State in this analysis and review. The Department of the Interior (Department) shall concurrently carry out its responsibilities under the Mineral Leasing Act (MLA), the National Environmental Policy Act (NEPA), and other applicable Federal laws that cannot be delegated to the State. The Department shall carry out these responsibilities in accordance with the Federal lands program and this Agreement in a timely manner so as to avoid, to the extent possible, duplication of the responsibilities of the State as set forth in this Agreement and the Program. Responsibilities and decisions which can be delegated to the State under other applicable Federal laws may be specified in working agreements between OSM and the State without amendment to this Agreement. The Secretary will consider the information in the PAP and, where appropriate, make decisions required by the Federal Act, MLA, NEPA, and other Federal laws.

2. ASMC will be the primary point of contact for operators regarding the review of the PAP, except on matters concerned exclusively with 43 CFR Parts 3480-3487, administered by the Bureau of Land Management (BLM). ASMC will be responsible for informing the applicant of all joint State-Federal determinations. The Secretary may act independently of the State to carry out responsibilities under laws other than the Federal Act or provisions of the Act not covered by the Program, and in instances of disagreement over the Act and the Federal lands program. ASMC shall send to OSM, copies of any correspondence with the applicant and any information received from the applicant regarding the mining plan including the operation and reclamation plan portion of the permit application. OSM shall send to ASMC copies of all independent correspondence with the applicant which may have a bearing on the PAP. As a matter of practice, OSM will not independently initiate contacts with applicants regarding completeness or deficiencies of the PAP with respect to matters covered by the Program.

3. ASMC shall assume the responsibilities listed in 30 CFR 740.4(c) (1), (2), (4), (5), and (6). OSM shall retain the responsibilities listed in 30 CFR 740.4(c)(3) and the exceptions specified in (c)(7) (i) through (vii). OSM shall assist the State in carrying out its responsibilities by:

(a) Distributing copies of the PAP to, and coordinating the review of the PAP among, all Federal agencies which have responsibilities relating to decisions on the PAP. This shall be done in a manner which ensures timely identification, communication and resolution of issues relating to those Federal agencies' statutory requirements. OSM shall request that such other Federal agencies furnish their findings and any requests for additonal data to OSM within 45 calendar days of their receipt of the PAP.

(b) Providing ASMC with the analyses and conclusions of other Federal agencies.

(c) Addressing conflicts and difficulties of the other Federal agencies in a timely manner.

(d) Assisting in scheduling joint meetings as necessary between State and Federal agencies.

(e) Where OSM is assisting ASMC in reviewing the permit application, furnish the State with the work product within 45 calendar days of receipt of the State's request for such assistance, or earlier if mutually agreed upon by OSM and the State.

(f) Exercising its responsibilities in a timely manner as set forth in a mutually agreed upon schedule, governed to the extent possible by the deadlines established in the Program.

(g) Assuming all responsibility for ensuring compliance with any Federal lessee protection bond requirement.

4. Review of the PAP:

(a) OSM and ASMC shall coordinate with each other during the review process as needed. ASMC shall keep OSM informed of findings during the review process which bear on the responsibilities of other Federal agencies. OSM shall ensure that any information OSM receives which has a bearing on decisions regarding the PAP is promptly sent to ASMC.

(b) The State shall review the PAP for compliance with the Program.

(c) OSM shall review the PAP for compliance with the Act and the requirements of other Federal laws and regulations. OSM and ASMC shall develop a work plan and schedule for PAP review and each shall identify a person as the project leader. The OSM project leader shall serve as the primary point of contact between OSM and ASMC throughout the review process. Not later than 50 days after receipt of the PAP, OSM shall furnish ASMC with its preliminary findings on the PAP and specify any requirements for additional data. To the extent practicable, the State shall provide OSM all available information that may aid OSM in preparing any findings.

(d) ASMC shall provide to OSM written findings indicating whether the PAP is in compliance with the Program, and a technical analysis of the PAP.

(e) ASMC may proceed to issue a permit in accordance with the Program prior to the necessary Secretarial decision on the mining plan, provided that ASMC advises the operator in the permit that Secretarial approval of a mining plan must be obtained before the operator may conduct surface coal mining operations on Federal lands. ASMC shall reserve the right to amend or rescind any requirements of the approved permit to conform with any terms or conditions imposed by the Secretary in his approval of the mining plan.

5. Prior to acting on a permit revision or renewal, ASMC shall consult with OSM on whether such revision or renewal constitutes a mining plan modification under 30 CFR 746.18. OSM shall inform the State within 30 days of receiving notice of a proposed revision or renewal, whether any permit revision or renewal constitutes a mining plan modification. Permit revisions which do not constitute mining plan modifications shall be approved solely by the State.

OSM may establish criteria consistent with 30 CFR 746.18 to determine which permit revisions and renewals clearly do not constitute mining plan modifications. If such criteria are promulgated, revisions or renewals which do not constitute mining plan modifications in accordance with the criteria may be approved by ASMC before it submits copies of the revision or renewal to OSM.

ARTICLE VII: INSPECTIONS

A. ASMC shall conduct inspections on Federal lands and prepare and file inspection reports in accordance with the Program.

B. ASMC shall, subsequent to conducting any inspection, and on a timely basis, file with OSM a legible copy of the completed State inspection report.

C. ASMC shall be the point of contact and primary inspection authority in dealing with the operator concerning operations and compliance with the requirements covered by the Agreement, except as described hereinafter. Nothing in this Agreement shall prevent inspections by authorized Federal or State agencies for purposes other than those covered by this Agreement. The Department may conduct any inspections necessary to comply with 30 CFR Parts 842 and 843 and its obligations under laws other than the Act.

D. OSM shall ordinarily give the ASMC reasonable notice of its intent to conduct an inspection under 30 CFR 842.11 in order to provide State inspectors with an opportunity to join in the inspection. When OSM is responding to a citizen complaint of an imminent danger to the public health and safety, or of significant, imminent environmental harm to land, air or water resources, pursuant to 30 CFR 842.11(b)(1)(ii)(C), it will contact ASMC no less than 24 hours prior to the Federal inspection, if practicable, to facilitate a joint Federal/State inspection. All citizen complaints which do not involve an imminent danger or significant imminent environmental harm shall be referred to ASMC for action. The Secretary reserves the right to conduct inspections without prior notice to ASMC to carry out his responsibilities under the Federal Act.

ARTICLE VIII: ENFORCEMENT

A. ASMC shall have primary enforcement authority under the Act concerning compliance with the requirements of this Agreement and the Program. Enforcement authority given to the Secretary under other laws and orders, including but not limited to those listed in Appendix A, is reserved to the Secretary.

B. During any joint inspection by OSM and ASMC, ASMC shall have primary responsibility for enforcement procedures, including issuance of orders of cessation, notices of violation, and assessment of penalties. The ASMC shall inform OSM prior to issuance of any decision to suspend or revoke a permit.

C. During any inspection made solely by OSM or any joint inspection where the ASMC and OSM fail to agree regarding the propriety of any particular enforcement action, OSM may take any enforcement action necessary to comply with 30 CFR Parts 843 and 845. Such enforcement actions shall be based on the standards in the approved Program, the Act, or both, and shall be taken using the procedures and penalty system contained in 30 CFR Parts 843 and 845.

D. The ASMC and the Department shall promptly notify each other of all violations of applicable laws, regulations, orders, or approved mining permits subject to this Agreement, and of all actions taken with respect to such violations.

E. Personnel of the State and representatives of the Department shall be mutually available to serve as witnesses in enforcement actions taken by either party.

F. This Agreement does not limit the Department's authority to enforce violations of Federal law which establish standards and requirements which are authorized by laws other than the Act.

ARTICLE IX: BONDS

A. ASMC and the Secretary shall require each operator covered by the Federal lands program to submit a single performance bond payable to Alabama and the United States to cover the operator's responsibilities under the Federal Act and the Program. Such performance bond shall be conditioned upon compliance with all requirements of the Federal Act, the Program and any other requirements imposed by the Department or the Federal land management agency. Such bond shall provide that if this Agreement is terminated, the bond shall be payable only to the United States to the extent that lands covered by the Federal lands program are involved.

B. Prior to releasing the operator from any obligation under such bond, the ASMC shall obtain the concurrence of OSM. The ASMC shall also advise OSM of annual adjustment to the performance bond, pursuant to the Program. Departmental concurrence shall include coordination with other Federal agencies having authority over the lands involved.

Such bond shall be subject to forfeiture with the consent of OSM, in accordance with the procedures and requirements of the Program.

C. Submission of a performance bond does not satisfy the requirements for a Federal lease bond required by 30 CFR Subpart 3474 or lessee protection bond required in addition to a performance bond, in certain circumstances, by Section 715 of the Act.

ARTICLE X: DESIGNATING LAND AREAS UNSUITABLE FOR ALL OR CERTAIN TYPES OF SURFACE COAL MINING OPERATIONS

A. When either ASMC or OSM receives a petition to designate lands areas unsuitable for all or certain types of surface coal mining operations that could impact adjacent Federal and non-Federal lands, the agency receiving the petition shall (1) notify the other of receipt and the anticipated schedule for reaching a decision; and (2) request and fully consider data, information and views of the other.

B. Authority to designate State and private lands as unsuitable for mining is reserved to the State. Authority to designate Federal lands as unsuitable for mining is reserved to the Secretary.

ARTICLE XI: TERMINATION OF COOPERATIVE AGREEMENT

This Agreement may be terminated by the Governor or the Secretary under the provisions of 30 CFR 745.15.

ARTICLE XII: REINSTATEMENT OF COOPERATIVE AGREEMENT

If this Agreement has been terminated in whole or in part it may be reinstated under the provisions of 30 CFR 745.16.

ARTICLE XIII: AMENDMENT OF COOPERATIVE AGREEMENT

This Agreement may be amended by mutual agreement of the Governor and the Secretary in accordance with 30 CFR 745.14.

ARTICLE XIV: CHANGES IN STATE OR FEDERAL STANDARDS

A. The Department or the State may from time to time promulgate new or revised performance or reclamation requirements or enforcement and administration procedures. Each party shall, if it determines it to be necessary to keep this Agreement in force, change or revise its regulations and request necessary legislative action. Such changes shall be made under the procedures of 30 CFR Part 732 for changes to the State Program and under the procedures of Section 501 of the Act for changes to the Federal lands program.

B. ASMC and the Department shall provide each other with copies of any changes to their respective laws, rules, regulations and standards pertaining to the enforcement and administration of this Agreement.

ARTICLE XV: CHANGES IN PERSONNEL AND ORGANIZATION

Each party to this Agreement shall notify the other, when necessary, of any changes in personnel, organization and funding or other changes that will affect the implementation of this Agreement to ensure coordination of responsibilities and facilitate cooperation.

ARTICLE XVI: RESERVATION OF RIGHTS

In accordance with 30 CFR 745.13, this Agreement shall not be construed as waiving or preventing the assertion of any rights that have not been expressly addressed in this Agreement that the State or Secretary may have under other laws or regulations, including but not limited to those listed in Appendix A.

Dated: July 16, 1985.
Signed:

George C. Wallace,
Governor of Alabama.

Dated: June 28, 1985.
Signed:

Ann McLaughlin,
Under Secretary of the Interior.

APPENDIX A

1. The Federal Land Policy and Management Act, 43 U.S.C. 1701 *et seq.*, and implementing regulations.

2. The Mineral Leasing Act of 1920, 30 U.S.C. 181 *et seq.*, and implementing regulations including 43 CFR Parts 3480-3487.

3. The National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*, and implementing regulations, including 40 CFR Part 1500.

4. The Endangered Species Act, 16 U.S.C. 1531 *et seq.*, and implementing regulations, including 50 CFR Part 402.

5. The National Historic Preservation Act of 1966, 16 U.S.C. 470 *et seq.*, and implementing regulations, including 36 CFR Part 800.

6. The Clean Air Act, 42 U.S.C. 7401 *et seq.*, and implementing regulations.

7. The Federal Water Pollution Control Act, 33 U.S.C. 1251 *et seq.*, and implementing regulations.

8. The Resource Conservation and Recovery Act of 1976, 42 U.S.C. 6901 *et seq.*, and implementing regulations.

9. The Reservoir Salvage Act of 1960, amended by the Preservation of Historical and Archaeological Data Act of 1974, 16 U.S.C. 469 *et seq.*

10. Executive Order 1593 (May 13, 1971), Cultural Resource Inventories on Federal Lands.

11. Executive Order 11988 (May 24, 1977), for flood plain protection. Executive Order 11990 (May 24, 1977), for wetlands protection.

12. The Mineral Leasing Act for Acquired Lands, 30 U.S.C. 351 *et seq.*, and implementing regulations.

13. The Stock Raising Homestead Act of 1916, 43 U.S.C. 291 *et seq.*

14. The Constitution of the United States.

15. The Constitution of the State and State Law.

[50 FR 30921, July 30, 1985]

PART 902—ALASKA

Sec.
902.1 Scope.
902.10 State regulatory program approval.
902.16 Required program amendments.
902.20 Approval of Alaska Abandoned Mine and Reclamation Plan.

AUTHORITY: Pub. L. 95-87 (30 U.S.C. 1201 *et seq.*)

§ 902.1 Scope.

This part contains all rules applicable only within Alaska that have been adopted under the Surface Mining Control and Reclamation Act of 1977.

[48 FR 12889, Mar. 23, 1983]

§ 902.10 State regulatory program approval.

The Alaska State program, as submitted on July 23, 1982, as amended and clarified on December 13, 1982, and January 11, 1983, is approved, effective on May 2, 1983. Beginning on that date, the Alaska Department of Natural Resources shall be deemed the regulatory authority in Alaska for all surface coal mining and reclamation operations and all exploration operations on non-Federal and non-Indian lands. Only surface coal mining and reclamation operations on non-Federal and non-Indian lands shall be subject to the provisions of the Alaska permanent regulatory program. Copies of the approved program are available at the following addresses:

Office of Surface Mining, Administrative Record Office, Room 5315, 1100 L Street, NW, Washington, DC 20240

Wyoming Field Office, Office of Surface Mining, 935 Pendell Boulevard, Freeden Building, Mills, Wyoming 82644

Division of Minerals and Energy Management, Department of Natural Resources, State of Alaska, 555 Cordora Street, Room 22, Anchorage, Alaska 99501

[48 FR 12889, Mar. 23, 1983]

§ 902.16 Required program amendments.

Pursuant to 30 CFR 732.17, Alaska is required to submit for OSM's approval the following proposed program amendments by the dates specified.

(a) By August 2, 1985, Alaska shall submit for OSM's approval

(1) Rules governing the training, examination and certification of blasters and

(2) A program to examine and certify all persons who are directly responsible for the use of explosives in surface coal mining operation.

(b) Reserved.

[50 FR 28573, July 15, 1985]

§ 902.20 Approval of Alaska Abandoned Mine and Reclamation Plan.

The Alaska Reclamation Plan, as submitted on August 17, 1983, is approved. Copies of the approved program are available at:

State of Alaska, Department of Natural Resources, Division of Minerals and Energy Management, 55 Cordova Street, Anchorage, Alaska 99510

Office of Surface Mining Reclamation and Enforcement, Casper Field Office, P.O. Box 1420, 935 Pendell Blvd., Mills, Wyoming 82644

Office of Surface Mining Reclamation and Enforcement, Administrative Record—Room 5315, 1100 "L" Street, NW., Washington, D.C. 20240.

[48 FR 56753, Dec. 23, 1983]

PART 904—ARKANSAS

Sec.

904.1 Scope.
904.10 State regulatory program approval.
904.15 Approval of amendments to State regulatory program
904.16 Required program amendments.
904.20 Approval of Arkansas abandoned mine land reclamation plan.

AUTHORITY: Pub. L. 95-87, Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*)

§ 904.1 Scope.

This part contains all rules applicable only within Arkansas which have been adopted under the Surface Mining Control and Reclamation Act of 1977.

[45 FR 77015, Nov. 21, 1980]

§ 904.10 State regulatory program approval.

(a) The Arkansas permanent program submitted February 18, 1980, as amended May 29, 1980, July 2, 1980 (with clarifications submitted July 29, August 8, August 14 and August 29, 1980), and as further amended September 2, 1980, January 19, 1981, and March 12, 1981, is approved effective upon publication of this notice. Copies of the approved program, as amended, are available at:

(1) Arkansas Department of Pollution Control and Ecology, Mining Reclamation Division, 8001 National Drive, Little Rock, Arkansas 72219, telephone: (501) 371-2130.

(2) Office of Surface Mining Reclamation and Enforcement, Scarritt Building, 818 Grand Avenue, 5th Floor, Kansas, City, Missouri 64106, telephone (816) 374-3920.

(3) Office of Surface Mining Reclamation and Enforcement, Administrative Record Office, 1100 L Street NW., Washington, D.C., telephone (202) 343-4728.

(b) *Arkansas Regulations that must be disapproved:* In accordance with the May 16 and August 15, 1980 decisions of the U.S. District Court for the District of Columbia *In Re:* Permanent Surface Mining Regulation Litigation, Civil Action No. 79-1144, the Secretary hereby affirmatively disapproves the following Arkansas regulations to the extent indicated:

(1) Section 701.5. The definition of "mine plan area," and the use of the term in sections 779, 780, 783 and 784, regarding requirements of information outside the permit area.

(2) Section 701.11(c) (i) and (ii), relating to exemptions for existing structures to the extent that the exemp-

tions are not mandatory after the appropriate findings are made.

(3) Section 761.5. The definition of "public road."

(4) Section 761.5(a)(2)(i). The definition of "valid existing rights" to the extent it does not allow recognition of such rights an operator may claim by having made a good faith effort to obtain all permits before August 31, 1977.

(5) Sections 761.11(c) and 761.12(f)(1) to the extent that they prohibit or restrict mining near places eligible for listing on the National Register of Historic Places, and the words "or a statutory or regulatory responsibility for" in § 761.12(f)(1). Further, both rules to the extent that they apply to privately owned places listed on the National Register of Historic Places in addition to publicly owned places.

(6) Sections 776.11(b) (3) and (5), relating to the requirements for maps of proposed exploration areas and a showing of the legal basis for entering exploration areas when the surface is owned by a person other than the operator, for lack of statutory authority.

(7) Sections 779.20 and 780.16, requiring a permit application to contain a study of fish and wildlife and to include a fish and wildlife reclamation plan.

(8) Section 779.21 to the extent it requires a soil survey for lands other than those which a reconnaissance inspection suggests may be prime farmland.

(9) Section 783.14(a)(1) insofar as it requires a geologic description of the strata down to and immediately below any coal seam for areas to be affected only by "surface operations and facilities" and where no removal of overburden down to the level of the coal seam will occur.

(10) Section 779.25 (c), (h) and (i) to the extent applicable to underground mining permit applications concerning coal seam and overburden description, location of existing and previously mined areas, and location of waste disposal and impoundments.

(11) Section 785.17(a) concerning the prime farmland grandfather clause, pending OSM's promulgation of new requirements.

(12) Sections 785.17(b)(3) and 823.14(c) concerning excessive soil compaction, pending OSM's promulgation of a standard for soil compaction.

(13) Section 785.17(b)(8) to the extent that it requires prime farmland reclamation target yields to be based on estimated yields under a high level of management rather than a level of management equivalent to that used on prime farmlands in the surrounding area.

(14) Section 786.5(b) to the extent that "or has not been" is part of the definition of "irreparable damage to the environment."

(15) Section 805.13(d) to the extent that the regulatory authority could grant an exception from the revegetation requirements of Part 816.

(16) Sections 806.12(e)(6)(iii) and 806.12(g)(7)(iii) to the extent they require cessation of operations upon the insolvency of a surety.

(17) Section 808.12(c) to the extent that it limits bond liability to protection of the hydrologic balance.

(18) Section 808.14(b) to the extent it allows the regulatory authority to forfeit and keep the entire amount of a bond where the entire amount is not needed to complete the reclamation.

(19) Sections 816.42(a)(1) and (7) to the extent they apply effluent standards to the reclamation phase of a surface coal mining operation.

(20) Section 816.42(b) relating to effluent standard exemptions during major storm periods, pending OSM's promulgation of new storm exemption regulations.

(21) Section 816.46(b) concerning sediment storage volume in sediment ponds.

(22) Section 816.46(c) concerning detention time for water in sediment ponds.

(23) Section 816.46(d) to the extent it requires dewatering devices to have a discharge rate to achieve and maintain the theoretical detention time for sediment ponds.

(24) Section 816.46(h) concerning sediment removal from sediment ponds.

(25) Section 816.65(f) requiring special approval prior to blasting within 1,000 feet of certain buildings and 500 feet of other facilities to the extent it

restricts blasting at distances greater than 300 feet.

(26) Section 816.83(a) concerning coal processing waste banks, to the extent it precludes a possible exemption from the underdrain requirement where the operator can demonstrate that an alternative would ensure structural integrity of the waste bank and protection of water quality.

(27) Section 816.95 concerning air resources protection to the extent it applies to air pollution not caused by erosion.

(28) Section 816.103(a)(1) to the extent it does not provide operators the option of treating acid-forming and toxic-forming material in lieu of covering such materials.

(29) Section 816.115 to the extent it requires an operator who proposes range or pasture as the post-mining land use to actually use the land for grazing for the last two years of bond liability.

(30) Sections 823.11(c), 823.15(b) and 823.15(c) to the extent they require an operator on prime farmland to actually return the land to crop production.

(31) Section 816.116(b), to the extent it states that the period of responsibility for successful revegetation is not commenced until the vegetation reaches 90 percent of the natural cover in the area.

(32) Section 816.133(b)(1) to the extent it does not allow restoration of lands to the conditions they were capable of supporting prior to any mining.

(33) Sections 816.133 (c)(4) and (c)(9) to the extent they require an operator to provide "letters of commitment" for proposed land use changes or for proposed cropland use.

(34) Section 701.5. The definition of "roads" and its use in §§ 816.150—816.176.

(35) Sections 816.150-176 concerning performance standards for three classes of roads.

(36) Section 816.52(a)(1), as it applies to underground mining, to the extent that it requires monitoring to determine the effects of underground mining activities on the recharge capacity of reclaimed lands.

(37) Section 816.54, to the extent it applies to underground mining.

(38) Sections 816.101(b)(1) and 816.102, as they apply to underground mining, to the extent that there is no provision for some flexibility from AOC requirements for settled, stablized, and revegetated fills at underground mines.

(39) Part 823 concerning underground mining operations on prime farmland to the extent it does not have an exemption for surface facilities actively used over extended periods, but which affect minimal amounts of land.

[45 FR 77015, Nov. 21, 1980, as amended at 47 FR 3109, Jan. 22, 1982]

§ 904.15 Approval of amendments to State regulatory program

(a) The following is approved effective on March 16, 1984: Revised Arkansas Surface Coal Mining Code at sections 771.25(a)(2), 776(c), and 842(c) (1), (2), (4), and (5)(i)(ii) submitted to OSM by a letter dated December 7, 1983.

(b) The following amendment submitted to OSM on May 21, 1985, is approved effective August 15, 1985: Modifications to the Arkansas regulations at section 843.12, 845.18, 845.19 and 845.20. This approval is contingent upon the State's promulgation of the proposed regulations in the identical form submitted for OSM's review and approval.

(c) The following amendments submitted to OSM on December 17, 1984, and revised on May 10, 1985 are approved effective December 2, 1985 provided that they are adopted in the form submitted and reviewed by OSM: Revisions to Arkansas regulations governing the use of explosives, as contained in 816.61-S, 816.61-U, 816.62, 816.64, 816.64-U, 816.65, 816.67, and 816.68; and regulations for programs for blaster training, examination, and certification as proposed at 850.1, 850.5, 850.12, 850.13, 850.14 and 850.15.

[49 FR 9898, Mar. 3, 1984, as amended at 50 FR 32848, Aug. 15, 1985; 50 FR 49376, Dec. 2, 1985]

§ 904.16 Required program amendments. [Reserved]

§ 904.20 Approval of Arkansas abandoned mine land reclamation plan.

The Arkansas Reclamation Plan, as submitted on July 7, 1982, is approved. Copies of the approved program are available at:

Office of Surface Mining Reclamation and Enforcement, Room 3432, 333 W. 4th Street, Tulsa, Oklahoma 74103

State of Arkansas Department of Pollution Control and Ecology, Division of Surface Mining Reclamation, 8001 National Drive, Little Rock, Arkansas 72209

Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 5315, 1100 L Street, NW., Washington, D.C. 20240

[48 FR 19712, May 2, 1983]

PART 906—COLORADO

Sec.
906.1 Scope.
906.10 State regulatory program approval.
906.11 Conditions of State regulatory program approval.
906.15 Approval of regulatory program amendments.
906.16 Required program amendments.
906.20 Approval of Colorado abandoned mine land reclamation plan amendment.
906.30 State-Federal cooperative agreement.

AUTHORITY: Pub. L. 95-87, Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*).

§ 906.1 Scope.

This part contains all rules applicable only within Colorado that have been adopted under the Surface Mining Control and Reclamation Act of 1977.

[45 FR 82211, Dec. 15, 1980]

§ 906.10 State regulatory program approval.

The Colorado State program as submitted on February 29, 1980, and amended and clarified on June 11, 1980, was conditionally approved, effective December 15, 1980. Beginning on that date, the Colorado Department of Natural Resources was deemed the regulatory authority in Colorado for surface coal mining and reclamation operations and for coal exploration operations on non-Federal and non-Indian lands. Copies of the approved program are available for review at:

(a) Department of Natural Resources, 1313 Sherman Street, Denver, Colorado 80203.

(b) Office of Surface Mining, 219 Central Avenue, N.W., Albuquerque, New Mexico 87102.

(c) Office of Surface Mining, Administrative Record Room, 1100 L Street, N.W., Washington, D.C. 20240.

[47 FR 56350, Dec. 16, 1982]

§ 906.11 Conditions of State regulatory program approval.

The approval of the State program is subject to the following conditions:

(a)-(b) [Reserved]

(c) The approval found in § 906.10 will terminate on September 30, 1984, unless Colorado submits to the Secretary by that date copies of fully implemented regulations containing provisions which modify the existing SR 4.15.7(2)(d)(ii) to incorporate the requirement of 30 CFR 816.116(b) and 817.116(b) to obtain the approval of the Director of the Office of Surface Mining in the selection of alternative technical guidance documents for revegetation success, or otherwise amends its program to accomplish the same result.

(d) The approval found in § 906.10 will terminate on September 30, 1984, unless Colorado submits to the Secretary by that date copies of fully implemented regulations containing provisions which modify the existing SR 4.15.7(2)(d)(vi) to provide that revegetation success standards on small mines shall be approved by the Director of the Office of Surface Mining, or otherwise amends its program to accomplish the same result.

(e)—(o) [Reserved]

(p) The approval found in § 906.10 will terminate on September 30, 1984, unless Colorado submits to the Secretary by that date copies of a fully enacted statute and implemented regulations containing provisions which modify CRS 34-33-109(7)(f) and SR 2.08.5 to require that the holder of a valid permit may continue surface coal mining operations under said permit, subject to section 34-33-123, beyond the expiration date until a final administrative decision on renewal is rendered if a renewal application is received by the division at least one year prior to the expiration date of the permit, or otherwise amends its program to accomplish the same result.

(q)—(z) [Reserved]

(aa) [Reserved]

(bb) Various state rules were adopted based on OSM's proposed bonding regulations, which require changes in order to conform to the now promulgated bonding regulations. Accordingly, the approval found in § 906.10 will terminate on September 30, 1984, unless Colorado submits to the Secretary by that date copies of fully implemented regulations containing provisions which modify:

(1)—(3) [Reserved]

(cc)-(dd) [Reserved]

(ee) The approval found in § 906.10 will terminate on September 30, 1984, unless Colorado submits to the Secretary by that date copies of a fully enacted statute containing provisions which modify CRS 34-33-135(2) (a) and (b) to be consistent with section 520(b)(2) of SMCRA which requires a showing that a violation or order would "immediately affect a legal interest of the plaintiff" as a condition precedent to commencement of a citizen suit without 60 days prior notice, or otherwise amends its program to accomplish the same result.

(ff)-(ll) [Reserved]

(mm)(1) The Secretary will initiate steps to terminate the approval found in § 906.10 on June 1, 1982, unless Colorado submits to the Secretary by that date copies of fully implemented regulations containing provisions for:

(i) Costs and expenses regarding discriminatory acts, pursuant to 30 CFR Part 830, as in 43 CFR 4.1294(a)(2);

(ii) Expert witness fees, and costs and expenses in seeking the award as in 43 CFR 4.1295; and

(iii) The administrative appeal of a decision as in 43 CFR 4.1296.

(2) The Secretary will initiate steps to terminate the approval found in § 906.10 on May 20, 1983, unless Colorado submits to the Secretary by that date copies of fully implemented regulations containing provisions for costs and expenses from the State to a citizen as in 43 CFR 4.1294(b).

(nn) [Reserved]

(oo) The approval found in § 906.10 will terminate on September 30, 1984, unless Colorado submits to the Secretary by that date copies of a fully enacted statute containing provisions which amends CRS 34-48-102 by deleting the priority of right exception to the restriction on mining under any building or other improvements without securing the owner against damages, or otherwise amends its program to accomplish the same result.

(pp)-(ss) [Reserved]

[45 FR 82211, Dec. 15, 1980, as amended at 46 FR 54070, Oct. 30, 1981; 47 FR 56350, Dec. 16, 1982; 49 FR 18481, May 1, 1984; 50 FR 49925, Dec. 6, 1985]

§ 906.15 Approval of regulatory program amendments.

(a) The following amendments are approved effective December 16, 1982: Revisions submitted on January 11, 1982, and February 25, 1982, to Colorado Rules 1.03.3(2), 1.03.4(2)(a), 2.02.2(3), 2.03.4(3), 2.05.3(6), 2.05.4(2)(c), 2.05.6, 2.05.6(3)(a), 2.05.6(3)(c), 2.05.6(4), 2.05.6(6)(f)(iii), 2.06.12, 2.06.5(1), 2.06.6(2)(j), 2.06.8(3)(b), 2.06.8(5), 2.08.4(1)(f), 2.08.4(5)(b)(ii), 2.08.4(5)(c), 3.02.1(5)(b), 3.05.1(1)(a), 3.05.1(7), 4.05.2(2), 4.05.3(6)(a), 4.05.4, 4.05.6(3)(c), 4.05.6(9), 4.08.5, 4.15.7(2)(d), 4.15.8(7), 4.158(8), 4.16.2(1), 4.21.2(1), 4.21.2(2), 4.05.3(5), and 5.03.6.

(b) The following amendments are approved effective May 1, 1984: Revisions submitted on January 11, 1982, February 25, 1982, May 26, 1983 and August 2, 1983, to the Colorado statute at 34-33-108 and to the Colorado Rules at 1.13, 2.07.6(3) and 4.05.2(7).

(c) The following amendment is approved effective December 6, 1985.

The revised inspection report form approved by the Mined Land Reclamation Board on May 23, 1985.

(d) The following amendments are approved effective November 15, 1985.

(1) State rule 5.03.2(1) as revised in final form by Colorado on August 10, 1985, and submitted to OSM on August 28, 1985.

(2) State rule 5.04.5(2) as revised in final form by Colorado on August 10, 1985, and submnitted to OSM on August 28, 1985.

(e)(1) Revisions to the following provisions of 2 CCR 407-2, the rules and regulations of the Colorado Mined Land Reclamation Board, as submitted on August 28, 1984 and March 12, 1985, and as clarified and modified on March 8, 1985, August 29, 1985, and October 2, 1985, are approved effective February 5, 1986.

1.04(95)
1.04(111)
2.02.1
2.02.2(2)(c)
2.02.(g)
2.02.3(1)(c)(ii)
2.02.3(1)(e)
2.03.5(3)
2.03.9(1)
2.04.4
2.04.8(1)
2.04.9(1)
2.04.10(4)
2.04.12(1), (2) and (4)
2.05.3(4)(a)(i)(A)
2.05.3(4)(a)(ii)(A)
2.07.5(1)(b)
2.10.1(1), (2) and (3)
2.10.3(1)(i) and (j)
4.03
4.06.1(2)
4.06.2(1)
4.06.2(2)(a)
4.06.2(4)(a)(ii)
4.06.4(1)
4.07.1(2)
4.07.3(1) and (2)
4.08.3(2)(b)(i) and (ii)
4.08.4(1)(b)(ii)
4.08.6(2)
4.15.1(2)(a) and (d)
4.15.2
4.15.1(4)
4.15.4
4.15.5
4.15.6(3)
4.15.8(2)
4.16.2
4.16.3
4.18(3)
4.18(4)(i)
4.21.1
4.21.4(1)
4.30.1(2)
5.02.2
5.03.2(2)

(2) Addition of the following provisions to 2 CCR 407-2, the rules and regulations of the Colorado Mined Land Reclamation Board, as submitted on March 12, 1985 is approved effective February 5, 1986: 1.14, 1.15 and 5.04.6(4).

(3) Deletion of the following provisions from 2 CCR 407-2, the rules and regulations of the Colorado Mined Land Reclamation Board, as submitted on March 12, 1985 and clarified on October 2, 1985 is approved effective February 5, 1986: 2.05.5(1)(a)(iv), 2.10.2(4), and 4.15.8(8).

(4) Revisions to 2 CCR 407-2, 4.15.8(3), (4) and (7), as submitted on March 12, 1985, are approved effective February 5, 1986, except for the proposed addition of the phrase "or other methods of comparison approved by the Division" to each of these paragraphs, which is not approved.

(5) Revisions to 2 CCR 407-2, 4.15.9, except for the deletion of "two consecutive" from the phrase "the last two consecutive growing seasons of the extended liability period", and the addition of the phrase "or other methods of comparison approved by the Division," as submitted on March 12, 1985, are approved effective February 5, 1986. As approved, the revised rule reads as follows:

> For areas to be used as cropland, success of revegetation shall be determined on the basis of crop production from the mined area as compared to approved reference areas or other approved standard(s). Crop production from the mined area shall not be less than that of the approved reference area or standard for the last two consecutive growing seasons of the extended liability period established in 3.02.3. This liability period shall commence on the date of initial planting of the crop being grown. Production shall be considered equal if it is not less than 90% of the production as determined from the reference area or approved standard with 90% statistical confidence.

(6) Addition of the phrase "[e]xcept as provided in 4.08.4(10)(a)," to the introductory paragraph of 2 CCR 407-2, 4.08.4(10), as submitted on August 28, 1984, is approved effective February 5, 1986, but the proposed amendments to other portions of 2 CCR 407-2, 4.08.4(10), as submitted on August 28, 1984, are not approved.

(f) The following amendment is approved effective May 30, 1986. Revised regulation 2CCR 407-2, 5.03.3(2)(b) submitted to OSMRE by the Colorado

Mined Land Reclamation Board on January 23, 1986.

(g) The following amendment containing Colorado's blaster training, examination and certification program is approved effective July 1, 1986, provided the State promulgates the rules in a form substantively identical to that submitted on January 27, 1986: (1) Addition of definitions of "blaster certification program" and "certified blaster" to Rule 1.04 of 2 CCR 407-2, the rules and regulations of the Colorado Mined Land Reclamation Board, (2) addition of Rule 6 to 2 CCR 407-2, (3) the blaster training program submitted on January 27, 1986, and (4) the blaster certification examination as reviewed on May 13, 1986.

[47 FR 56351, Dec. 16, 1982, as amended at 49 FR 18481, May 1, 1984; 50 FR 47216, Nov. 15, 1985; 50 FR 49925, Dec. 6, 1985; 51 FR 4496, Feb. 5, 1986; 51 FR 19548, May 30, 1986; 51 FR 23752, July 1, 1986]

§ 906.16 Required program amendments.

Pursuant to 30 CFR 732.17, Colorado is required to submit for OSM's approval the following proposed program amendments by the date specified.

(a) [Reserved]

(b) By February 5, 1987, Colorado shall submit revisions to 2 CCR 407-2, 2.02.2(2)(g) or otherwise propose to amend its program to require that the notice filed by any person intending to conduct coal exploration involving the removal of 250 or fewer tons of coal include a complete description of the methods of exploration to be used and the practices that will be followed to reclaim the area following completion of exploration, and to clarify that specifying the maximum number of holes to be drilled will not fully satisfy this requirement.

(c) By February 5, 1987, Colorado shall submit a revised form of 2 CCR 407-2, 4.21.4(1) replacing the cross reference to 2.05.6(2)(b) with one to 2.05.6(2)(a)(iii), or otherwise propose to amend the coal exploration provisions of its program to protect critical habitats of endangered or threatened species and habitats of unusually high value for fish, wildlife or related environmental values.

(d) By February 5, 1987, Colorado shall submit revisions to 2 CCR 407-2, 406.1(2) or otherwise propose to amend its program to provide that topsoil storage practices other than stockpiling may be used only when (1) stockpiling would be detrimental to the quantity or quality of the stored materials, (2) all stored materials are moved to an approved site within the permit area, (3) the alternative practice would not permanently diminish the capability of the soil of the host site, and (4) the alternative practice would maintain the stored materials in a condition more suitable for future redistribution than would stockpiling.

(e) By February 5, 1987, Colorado shall submit revisions to 2 CCR 407-2, 406.2(2)(a) or otherwise propose to amend its program to establish definitive criteria governing the granting of topsoil removal variances, criteria which must be no less effective than those contained in the Federal regulations at 30 CFR 816.22(a)(3) and 817.22(a)(3).

(f) By February 5, 1987, Colorado shall submit revisions to 2 CCR 407-2, 406.1(4)(a)(ii) or otherwise propose to amend its program to require that, before the State approves topsoil substitutes or supplements, the operator must demonstrate that the proposed final soil medium would be the best available within the permit area to support the vegetation.

(g) By February 5, 1987, Colorado shall submit revisions to 2 CCR 407-2, 2.10.1(1) or otherwise propose to amend its program to require that all areas upon which roads or support facilities, other than isolated monitoring stations involving little or no surface disturbance, are to be sited be mapped at a scale of 1:6,000 or larger.

(h) By February 5, 1987, Colorado shall submit revisions to 2 CCR 407-2, 2.04.12(1) or otherwise propose to amend its program to require that prime farmland investigations be conducted on all lands upon which roads or support facilities are to be sited.

[49 FR 46373, Nov. 26, 1984, as amended at 51 FR 4497, Feb. 5, 1986; 51 FR 23752, July 1, 1986]

§ 906.20 Approval of Colorado Abandoned Mine Land Reclamation Plan Amendment.

The Colorado Abandoned Mine Plan, as approved on June 11, 1982, is amended on January 9, 1986. Copies of the approved program, as amended, are available at: State of Colorado, Department of Natural Resources, 423 Centennial Building, 1313 Sherman Street, Denver, Colorado 80203; Office of Surface Mining, Albuquerque Field Office, 219 Central Avenue, NW., Albuquerque, New Mexico 97102 and Office of Surface Mining, Administrative Record, Room 5315, 1100 "L" Street, NW., Washington, DC 20240

[51 FR 885, Jan. 9, 1986]

§ 906.30 State-Federal cooperative agreement.

The Governor of the State of Colorado, acting through the Mined Land Reclamation Division (MLRD), and the Secretary of the Department of the Interior, acting through the Assistant Secretary for Energy and Minerals, and the Office of Surface Mining (OSM), enter into a Cooperative Agreement (Agreement) to read as follows.

ARTICLE I: INTRODUCTION AND PURPOSE

1. This Agreement is authorized by section 523(c) of the Surface Mining Control and Reclamation Act (Act), 30 U.S.C. 1273(c), which allows a State with a permanent regulatory program approved by the Secretary under 30 U.S.C. 1253, to elect to enter into an Agreement for the regulation and control of surface coal mining operations on Federal lands.

This Agreement provides for State regulation, consistent with the Act, the Federal lands program (30 CFR Part 745) and the Colorado State Program (Program) for surface coal mining and reclamation operations, on Federal lands.

2. The purpose of this Agreement is to (a) foster Federal-State cooperation in the regulation of surface coal mining; (b) eliminate intergovernmental overlap and duplication; and (c) provide uniform and effective application of the Program on all non-Indian lands in Colorado, in accordance with the Act and the Program.

ARTICLE II: EFFECTIVE DATE

3. After being signed by the Secretary and the Governor, the Agreement shall be effective upon publication in the FEDERAL REGISTER as a final rule.

This Agreement shall remain in effect until terminated as provided in Article XI.

ARTICLE III: SCOPE

4. Under this Agreement, the laws, regulations, terms, and conditions of the Program conditionally approved effective December 15, 1980, 30 CFR Part 906, or as hereinafter amended in accordance with 30 CFR 732.17, for the administration of the Act, are applicable to Federal lands within the State except as otherwise stated in this Agreement, the Act, 30 CFR 745.13, or other applicable laws.

Orders and decisions issued by MLRD in accordance with the State Program that are appealable, shall be appealed to the State reviewing authority. Orders and decisions issued by the Department that are appealable, shall be appealed to the Department of the Interior's Office of Hearings and Appeals.

ARTICLE IV: REQUIREMENTS FOR AGREEMENT

5. The Governor and the Secretary affirm that they will comply with all of the provisions of this Agreement and will continue to meet all the conditions and requirements specified in this Article.

A. *Responsible Administrative Agency:* The MLRD shall be responsible for administering this Agreement on behalf of the Governor on Federal lands throughout the State. The Assistant Secretary for Energy and Minerals, or designee, shall administer this Agreement on behalf of the Secretary in accordance with the regulations in 30 CFR Chapter VII.

B. *Authority of State Agency:* The MLRD has and shall continue to have the authority under State law to carry out this Agreement.

C. *Funds:* Upon application by the MLRD and subject to appropriations, the Department shall provide the State with the funds to defray the costs associated with carrying out responsibilities under this Agreement as provided in section 705(c) of the Act and 30 CFR 735.16. If sufficient funds have not been appropriated to OSM, OSM and MLRD shall promptly meet to decide on appropriate measures that will insure that mining operations are regulated in accordance with the Program. If agreement cannot be reached, then either party may terminate the Agreement.

Funds provided to the State shall be adjusted in accordance with Office of Management and Budget Circular A-102, Attachment E.

D. *Reports and Records:* The MLRD shall make annual reports to the Director of OSM (Director) containing information with respect to compliance with the terms of this Agreement, pursuant to 30 CFR 745.12(c). The MLRD and the Director shall exchange, upon request, except where prohibited by Federal law, information developed under this Agreement. The Director shall provide the MLRD with a copy of any final evaluation report prepared concerning State administration and enforcement of this Agreement.

E. *Personnel:* The MLRD shall have the necessary personnel to fully implement this Agreement in accordance with the provisions of the Act and the approved Program. If sufficient funds have not been appropriated, OSM and MLRD shall promptly meet to decide on appropriate measures that will insure that mining operations are regulated in accordance with the Program.

F. *Equipment and Laboratories:* The MLRD shall assure itself access to equipment, laboratories, and facilities with which all inspections, investigations, studies, tests, and analyses can be performed which are necessary to carry out the requirements of this Agreement.

G. *Permit Application Fees:* The amount of the fee accompanying an application for a permit shall be determined in accordance with section 34-33-110(1) Colorado Revised Statutes (CRS 1973), as amended. All permit fees shall be retained by the State and deposited with the State Treasurer in the General Fund. The Financial Status Report submitted pursuant to 30 CFR 735.26 shall include a report of the amount of fees collected during the prior State fiscal year.

ARTICLE V: DEFINITIONS

6. Terms and phrases used in this Agreement which are defined in the Act, 30 CFR Parts 700, 701 and 740 and as defined in the Program shall be given the meaning set forth in said definitions. Where there is a conflict between the above referenced State and Federal definitions, the definitions used in the approved State Program will apply, except in the case of a term which defines the Secretary's continuing responsibilities under the Act and other laws.

ARTICLE VI: POLICIES AND PROCEDURES: REVIEW OF A PERMIT APPLICATION TO CONDUCT SURFACE COAL MINING AND RECLAMATION OPERATIONS OR AN APPLICATION FOR A PERMIT REVISION OR PERMIT RENEWAL

7. The MLRD and the Director shall require an operator on Federal lands to submit a permit application package or an application for a permit revision or renewal in an appropriate number of copies to the MLRD and OSM. Any documentation or information prepared by the operator for the sole purpose of complying with the 3-year requirement of section 7(c) of the Mineral Leasing Act (MLA) will be submitted directly to the Minerals Management Service (MMS). If such documentation is submitted as part of a permit application, a copy of the entire package will be forwarded to the MMS by OSM.

The permit application package or application for a permit revision or renewal shall be in the format required by the MLRD and include any supplemental information required by the Department. The permit application package or application for a permit revision or renewal shall satisfy the requirements of 30 CFR 741.12(b) and 30 CFR 741.13, and include the information required by, or necessary for, the MLRD and the Department to make a determination of compliance with:

(a) Section 34-33-101, *et seq.*, CRS 1973, as amended;

(b) Regulations of the Colorado Mined Land Reclamation Board for Coal Mining;

(c) Applicable terms and conditions of the Federal coal lease;

(d) Applicable requirements of the MMS's 30 CFR Part 211 regulations pertaining to the Mineral Leasing Act requirements unless previously submitted to the MMS; and

(e) Applicable requirements of the approved Program and other Federal laws including, but not limited to, those identified in 30 CFR Chapter VII, Subchapter D, and Appendix A of this Agreement.

8. The MLRD shall assume primary responsibility pursuant to sections 510(a) and 523(c) of the Act for the analysis, review, and approval of the permit application or application for a permit revision or renewal according to the standards of the approved Program. The Director shall assist the MLRD in the analysis of the permit application or application for a permit revision or renewal and coordinate with the other appropriate Federal agencies as specified by the Secretary according to the procedures set forth in Appendix B. The Department shall concurrently carry out its responsibilities which cannot be delegated to the State under the MLA, National Environmental Policy Act (NEPA), and other public laws (including, but not limited to, those in Appendix A) according to the procedures set forth in Appendix B so as, to the maximum extent possible, not to duplicate the responsibilities of the State as set forth in this Agreement and the Program. The Secretary shall consider the information submitted in the permit application package and, when appropriate, make the decisions required by the Act, MLA, NEPA and other public laws as described above.

9. As a matter of practice the Department will not independently initiate contacts

sions or renewals. However, the Department reserves the right to act independently of the MLRD to carry out its statutory responsibilities under the Act, MLA, NEPA and other public laws provided, however, that the Department shall send copies of all relevant correspondence to the MLRD.

10. The MLRD shall maintain a file of all original correspondence with the applicant and any information received from the applicant which may have a bearing on decisions regarding the permit application or application for a permit revision or renewal.

11. OSM shall have access to MLRD files for mines on Federal lands. MLRD will provide OSM copies of information OSM deems necessary.

12. To the fullest extent allowed by State and Federal law, the Director and MLRD shall cooperate so that duplication will be eliminated in conducting the review and analysis of the permit application package or application for a permit revision or renewal.

ARTICLE VII: INSPECTIONS

13. The MLRD shall conduct inspections on Federal lands and prepare and file inspection reports in accordance with the Program.

14. The MLRD shall, subsequent to conducting any inspection, and on a timely basis, file with the Director a copy of each inspection report. Such report shall adequately describe (1) the general conditions of the lands under the permit; (2) the manner in which the operations are being conducted; and (3) whether the operator is complying with applicable performance and reclamation requirements.

15. The MLRD will be the point of contact and primary inspection authority in dealing with the operator concerning operations and compliance with the requirements covered by this Agreement, except as described hereinafter. Nothing in this Agreement shall prevent Federal inspections by authorized Federal or State agencies for purposes other than those covered by this Agreement. The Department may conduct any inspections necessary to comply with 30 CFR Parts 842 and 743, as Part 743 relates to obligations under laws other than the Act.

16. OSM shall ordinarily give the MLRD reasonable notice of its intent to conduct an inspection under 30 CFR 842.11 in order to provide State inspectors with an opportunity to join in the inspection. When OSM is responding to a citizen complaint of an imminent danger to the public health and safety or significant, imminent environmental harm to land, air or water resources, pursuant to 30 CFR 842.11(b)(1(ii)(C), it will contact MLRD no less than 24 hours prior to the Federal inspection, if practicable, to facilitate a joint Federal/State inspection. All citizen complaints which do not involve an imminent danger shall be referred to MLRD for action. The Secretary reserves the right to conduct inspections without prior notice to MLRD to carry out his responsibilities under the Federal Act.

ARTICLE VIII: ENFORCEMENT

17. MLRD shall be the primary enforcement authority under the Act concerning compliance with the requirements of this Agreement and the Program. Enforcement authority given to the Secretary under other laws and orders including, but not limited to, those listed in Appendix A is reserved to the Secretary.

18. During any joint inspection by OSM and MLRD, MLRD shall have primary responsibility for enforcement procedures, including issuance of orders of cessation, notices of violation, and assessment of penalties. The MLRD shall consult OSM prior to issuance of any decision to suspend or revoke a permit.

19. During any inspection made solely by OSM or any joint inspection where the MLRD and OSM fail to agree regarding the propriety of any particular enforcement action, OSM may take any enforcement action necessary to comply with 30 CFR Parts 843 and 845. Such enforcement action shall be based on the performance standards included in the regulations of the approved Program, and shall be taken using the procedures and penalty system contained in 30 CFR Parts 843 and 845.

20. The MLRD and the Department shall promptly notify each other of all violations of applicable laws, regulations, orders, or approved mining permits subject to this Agreement and of all actions taken with respect to such violations.

21. Personnel of the State and representatives of the Department shall be mutually available to serve as witnesses in enforcement actions taken by either party.

22. This Agreement does not limit the Department's authority to enforce violations of Federal law which establish standards and requirements which are authorized by laws other than the Act.

ARTICLE IX: BONDS

23. For all surface coal mining operations on Federal lands, the MLRD and the Secretary shall require each operator to submit a single performance bond payable to the State and to the United States, if required by Federal regulations, to cover the operator's responsibilities under the Act and the Program. Such performance bond shall be conditioned upon compliance with all requirements of the Act, the Program and any other requirements imposed by the Department under the MLA, as amended. If the Agreement is terminated, all bonds will

revert to being payable only to the United States to the extent that Federal lands are involved. Submission of a performance bond does not satisfy the requirements for a Federal lease bond required by 30 CFR Subpart 3473 or a lessee protection bond required in addition to a performance bond, in certain circumstances, by section 715 of the Act.

24. Prior to releasing the operator from an obligation under a performance bond required by the Program, the MLRD shall obtain the concurrence of OSM. the MLRD shall also advise OSM of annual adjustments to the performance bond, pursuant to the Program. Departmental concurrence shall include coordination with other Federal agencies having authority over the lands involved.

25. The operator's performance bond shall be subject to forfeiture with the consent of OSM, in accordance with the procedures and requirements of the Program.

ARTICLE X: DESIGNATING LAND AREAS UNSUITABLE FOR ALL OR CERTAIN TYPES OF SURFACE COAL MINING OPERATIONS

26. The MLRD and the Director shall cooperate with each other in the review and processing of petitions to designate lands as unsuitable for surface coal mining operations. When either agency receives a petition that could impact adjacent Federal and non-Federal lands, respectively, the agency receiving the petition shall (1) notify the other of receipt and of the anticipated schedule for reaching a decision; and (2) request and fully consider data, information and views of the other.

The authority to designate State and private lands as unsuitable for mining is reserved to the State. The authority to designate Federal lands as unsuitable for mining is reserved to the Secretary or his designated respresentative.

ARTICLE XI: TERMINATION OF COOPERATIVE AGREEMENT

27. This Agreement may be terminated by the Governor or the Secretary under the provisions of 30 CFR 745.15.

ARTICLE XII: REINSTATEMENT OF COOPERATIVE AGREEMENT

28. If this Agreement has been terminated in whole or in part it may be reinstated under the provisions of 30 CFR 745.16.

ARTICLE XIII: AMENDMENT OF COOPERATIVE AGREEMENT

29. This Agreement may be amended by mutual agreement of the Governor and the Secretary in accordance with 30 CFR 745.14.

ARTICLE XIV: CHANGES IN STATE OR FEDERAL STANDARDS

30. The Department or the State may from time to time promulgate new or revised performance or reclamation requirements or enforcement and administration procedures. Each party shall, if it determines it to be necessary to keep this Agreement in force, change or revise its regulations and request necessary legislative action. Such changes shall be made under the procedures of 30 CFR Part 732 for changes to the State Program and under the procedures of section 501 of the Act for changes to the Federal lands program.

31. The MLRD and the Department shall provide each other with copies of any changes to their respective laws, rules, regulations and standards pertaining to the enforcement and administration of this Agreement.

ARTICLE XV: CHANGES IN PERSONNEL AND ORGANIZATION

32. Each party to this Agreement shall notify the other, when necessary, of any changes in personnel, organization and funding or other changes that will affect the implementation of this Agreement to ensure coordination of responsibilities and facilitate cooperation.

ARTICLE XVI: RESERVATION OF RIGHTS

33. In accordance with 30 CFR 745.13, this Agreement shall not be construed as waiving or preventing the assertion of any rights that have not been expressly addressed in this Agreement that the State or the Secretary may have under other laws or regulations, including but not limited to those listed in Appendix A.

Dated: September 27, 1982.

Richard D. Lamm,
Governor of Colorado.

Dated: September 20, 1982.

Donald Paul Hodel,
Acting Secretary of the Interior.

APPENDIX A

1. The Federal Land Policy and Management Act, 43 U.S.C. 1701 *et seq.*, and implementing regulations.

2. The Mineral Leasing Act of 1920, 30 U.S.C. 181 *et seq.*, and implementing regulations including 30 CFR Part 211.

3. The National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*, and implementing regulations including 40 CFR Part 1500.

4. The Endangered Species Act, 16 U.S.C. 1531 *et seq.*, and implementing regulations including 50 CFR Part 402.

5. The National Historic Preservation Act of 1966, 16 U.S.C. 470 *et seq.*, and implementing regulations, including 36 CFR Part 800.

6. The Clean Air Act, 42 U.S.C. 7401 *et seq.*, and implementing regulations.

7. The Federal Water Pollution Control Act, 33 U.S.C. 1251 *et seq.*, and implementing regulations.

8. The Resource Conservation and Recovery Act of 1976, 42 U.S.C. 6901 *et seq.*, and implementing regulations.

9. The Reservoir Salvage Act of 1960, amended by the Preservation of Historical and Archaeological Data Act of 1974, 16 U.S.C. 469 *et seq.*

10. Executive Order 1593 (May 13, 1971), Cultural Resource Inventories on Federal Lands.

11. Executive Order 11988 (May 24, 1977), for flood plain protection. Executive Order 11990 (May 24, 1977), for wetlands protection.

12. The Mineral Leasing Act for Acquired Lands, 30 U.S.C. 351 *et seq.*, and implementing regulations.

13. The Stock Raising Homestead Act of 1916, 43 U.S.C. 291 *et seq.*

14. The Constitution of the United States.

15. The Constitution of the State and State Law.

APPENDIX B—PROCEDURE FOR COOPERATIVE REVIEW OF PERMIT APPLICATION PACKAGES AND APPLICATIONS FOR PERMIT REVISIONS OR RENEWALS FOR FEDERAL COAL MINES IN COLORADO

I: Point of Contact and Coordination for the Review of Permit Applications and Applications for Permit Revisions or Renewals

A. The Colorado Mined Land Reclamation Division (MLRD) will:

1. Be the point of contact and coordinate communications with the applicant on issues concerned with the development, review and approval of the permit application package or application for permit revision or renewal.

2. Communicate with the applicant on issues of concern to the Office of Surface Mining (OSM) and promptly advise OSM of such issues and communications.

3. Provide OSM with a monthly report on the status of each permit application, or application for permit revision or renewal.

B. OSM will:

1. Be responsible for coordinating the review of the permit application package with all Federal agencies which have responsibilities related to approval of the package.

2. Be responsible for ensuring that any information OSM receives which has a bearing on decisions regarding the permit application package or application for a permit revision or renewal is sent promptly to MLRD.

C. Minerals Management Service (MMS) will:

1. Receive any documentation and information required by the 30 CFR Part 211 regulations.

2. Be the point of contact with the applicant on issues concerned exclusively with the 30 CFR Part 211 regulations.

3. Provide MLRD and OSM with copies of pertinent correspondence.

II: Receipt and Distribution of the Permit Application Package and Applications for Permit Revision or Renewal

A. MLRD will:

1. Receive from the applicant the appropriate number of copies of the permit application package, application for a permit revision or renewal, or the review correspondence from the applicant.

2. Identify an application manager responsible for coordinating the review and notify OSM.

3. Upon receipt of an application, MLRD will meet with OSM to discuss the application and agree upon a work plan and schedule.

B. OSM will:

1. Receive from the applicant the appropriate number of copies of the permit application package, application for a permit revision or renewal, or the review correspondence from the applicant.

2. Distribute copies of the permit application package and the identity of the MLRD application manager to other Federal agencies as required.

C. OSM, MMS and the Federal land management agency (FLMA) will: Each identify an application manager upon receipt of the application package. OSM will notify MLRD and all Federal agencies of the identity of the application managers.

III: Determination of Completeness

A. MLRD will:

1. Determine the completeness of a permit application package or application for a permit revision or renewal in accordance with section 34-33-118(1) CRS 1973, as amended and as defined in rule 1.04(30) of the Regulations of the Colorado Mined Land Reclamation Board for Coal Mining promulgated pursuant to the Colorado Surface Coal Mining Reclamation Act.

2. Issue public notice of a complete application in accordance with the procedures of section 34-33-118(2) CRS 1973, as amended.

IV: Determination of Preliminary Findings of Substantive Adequacy

A. MLRD will:

1. Consult with MMS, FLMA, OSM, and other appropriate Federal agencies to review the filed application for preliminary findings of substantive adequacy (henceforth "preliminary findings") and to assess the need for additional data requirements in their respective areas of responsibility.

2. Arrange meetings and field examinations with the interested parties, as necessary, to determine the preliminary findings.

3. Advise the applicant of the preliminary findings upon the advice and consent of FLMA, MMS, OSM and other Federal agencies specified by the Secretary.

4. Transmit the letter(s) informing the applicant of the preliminary findings with copies to FLMA, MMS, OSM and other Federal agencies specified by the Secretary.

5. Furnish the Director with copies of correspondence with the applicant and all information received from the applicant as requested.

B. OSM will:

1. At the request of MLRD, assist as possible in the review of the permit application package or application for a permit revision or renewal. In any case where assistance has been agreed upon, furnish MLRD with preliminary findings within 45 calendar days of receipt of the request.

2. Work with other Federal agencies involved in the review to insure timely response and resolution of issues of particular concern regarding their statutory requirements.

3. Within 30 days from notification of completeness, initiate NEPA compliance procedures and procedures required by other laws which OSM has responsibility for and has not delegated to the State.

4. Participate, as arranged, in meetings and field examinations.

C. FLMA will:

1. Review the permit application package or application for permit revision or renewal for preliminary findings as to whether the applicant's proposed post-mining land use is consistent with FLMA's land use plan, and as to the adequacy of measures to protect Federal resources not covered by the rights granted by the Federal coal lease.

2. Furnish OSM with preliminary findings and with any specific requirements for additional data, within 45 calendar days of FLMA's receipt of the permit application package or application for a permit revision or renewal.

3. Participate, as arranged, in meetings and field examinations.

D. MMS will:

1. Review the permit application package or application for a permit revision or renewal in regard to MLA requirements addressed in such application.

2. Furnish OSM with preliminary findings and with any specific requirements for additional data within 45 calendar days of MMS's receipt of the permit application package or application for a permit revision or renewal.

3. Participate, as arranged, in meetings and field examinations.

E. Other appropriate Federal agencies specified by the Secretary will:

1. Review the permit application package or application for a permit revision or renewal for preliminary findings in regard to their responsibilities under law.

2. Furnish OSM with preliminary findings within 45 calendar days of receipt of the application with specific requirements for additional data.

3. Participate, as arranged, in meetings and field examinations.

V: Findings of Technical Adequacy and NEPA Compliance

A. MLRD will:

1. Develop and coordinate the technical review of the permit application package or application for a permit revision or renewal. The review will include representatives of MLRD, MMS, FLMA, OSM and other appropriate Federal agencies specified by the Secretary.

2. Coordinate with OSM for the purpose of eliminating duplication, and provide to OSM a complete technical analysis pursuant to the approved Program that will serve as the technical base for any Environmental Analysis (EA) or Environmental Impact Statement (EIS) which may be necessary to determine NEPA compliance for each permit application package.

3. Coordinate, for the purpose of eliminating duplication, with MMS to conduct a technical analysis that will assist the MMS in making findings as may be necessary to determine compliance with the MLA.

4. Coordinate, for the purpose of eliminating duplication, with FLMA to conduct a technical analysis of issues regarding post-mining land use and the adequacy of measures to protect Federal resources not covered by the rights granted by the lease.

5. Coordinate, for the purposes of eliminating duplication, with other appropriate Federal agencies specified by the Secretary, to conduct a technical analysis of issues within their jurisdiction.

B. OSM will:

1. At the request of MLRD, assist as possible in the review of the application for technical adequacy in a timely manner as set forth by a schedule. Such schedule will be governed by the deadlines set forth in the Colorado Surface Coal Mining Reclamation Act and shall be developed by MLRD in cooperation with OSM.

2. Resolve conflicts and difficulties between other Federal agencies in a timely manner.

3. As soon as possible after receipt of the permit application package, determine the need for an EA or an EIS, pursuant to NEPA, with the assistance of FLMA, MMS, MLRD and other appropriate agencies, as arranged.

4. Publish notices of NEPA documents as required by Federal law and regulations.

5. Take the leadership role for the development of the EA and EIS including identification of areas where additional data is necessary.

6. Provide MLRD with the analysis and conclusions of the appropriate Federal agencies regarding those elements of the package which the Secretary cannot delegate to the State.

C. MMS will:

1. Review the permit application package or application for a permit revision or renewal for compliance with 30 CFR Part 211.

2. Furnish MLRD, through OSM, findings on compliance in a timely manner as set forth by schedule. Such schedule will be governed by the statutory deadlines set forth in the Colorado Surface Coal Mining Reclamation Act and shall be developed by MLRD in cooperation with MMS.

3. Participate, as arranged, in meetings and field examinations.

D. FLMA will:

1. Determine whether the permit application or application for a permit revision or renewal provides for post-mining land use consistent with FLMA's land use plan and determine the adequacy of measures to protect Federal resources under FLMA's jurisdiction not covered by the rights granted by the Federal coal lease.

2. Furnish MLRD, through OSM, its determination on the technical adequacy in a timely manner as set forth by schedule. Such schedule will be governed by the statutory time limits set forth in the Colorado Surface Coal Mining Reclamation Act and shall be developed by MLRD in cooperation with FLMA.

3. Participate, as arranged, in meetings and field examinations.

E. Other appropriate Federal agencies specified by the Secretary will:

1. Review the permit application package or application for a permit revision or renewal in regard to their responsibilities under law.

2. Furnish MLRD, through OSM, findings on compliance with other applicable Federal laws and regulations in a timely manner as set forth by schedule. Such schedule will be governed by the statutory deadlines set forth in the Colorado Surface Coal Mining Reclamation Act and shall be developed in cooperation with MLRD.

3. Participate, as arranged, in meetings and field examinations.

VI: Preparation of the Decision Document and Transmittal

A. MLRD will:

1. Prepare a finding of compliance with the Program as approved by the Secretary and the regulations promulgated thereunder, which will consist of an analysis of critical issues raised during the course of the review and the resolution of those issues.

2. Assist OSM in the preparation of the decision document for the permit application package or application for a permit revison or renewal, unless the work plan and schedule agreed upon provides otherwise. MLRD will provide OSM with:

a. a brief but comprehensive discussion of the need for the proposal and alternatives to the proposal;

b. a finding of compliance prepared under A.1;

c. all other specific written findings required under section 34-33-114 CRS 1973, as amended.

3. Consider the comments of OSM, MMS, FLMA and other appropriate Federal agencies when assisting in the preparation of the decision document.

B. OSM will:

1. Prepare the approved NEPA compliance finding.

2. Prepare the decision document with the assistance of MLRD unless the work plan and schedule agreed upon provides otherwise. The decision document shall contain the following:

a. an analysis of the environmental impacts of the proposal and alternatives to the proposal prepared in compliance with NEPA, CEQ regulations and OSM's NEPA Compliance Handbook;

b. the determinations and recommendations of FLMA;

c. the memorandum of recommendation from the MMS to the Assistant Secretary for Energy and Minerals, with regard to MLA requirements;

d. the comments of other appropriate Federal agencies specified by the Secretary; and

e. the relevant information submitted by MLRD as specified by A.2. of this Article.

3. Transmit the decision document to the Secretary.

C. FLMA will: Provide written concurrence on the decision document to OSM with regard to post-mining land use and the adequacy of measures to protect Federal resources not covered by rights granted by the Federal coal lease.

D. MMS will: Provide written concurrence on the decision document to OSM with regard to MMS responsibilities.

E. Other agencies will: Provide written concurrence on the decision document to OSM with regard to their responsibilities.

VII: Decision and Permit Issuance

A. The Secretary will:

1. Evaluate the analysis and conclusions as necessary to determine whether he concurs in the decision document insofar as it relates to his statutorily required decisions.

2. Inform the MLRD immediately of this decision. The reason for not approving shall be specified and recommendations for remedy shall be specified.

B. MLRD will:

1. Issue the permit, permit revision, or permit renewal for surface coal mining and reclamation operations after making a finding of compliance with the approved Program in the manner set forth in this Cooperative Agreement.

2. Advise the operator in the permit of the necessity of obtaining Secretarial approval, for those statutory requirements which have not been delegated to the State, prior to directly affecting Federal lands, and if necessary, prohibit the operator from directly affecting Federal lands under the permit, revised permit, or permit renewal until after the Secretary's approval has been received.

3. Reserve the right to modify the permit, permit revision, or permit renewal, when appropriate, in order to resolve conflicts between the permit requirements and the requirements of other laws, rules and regulations administered by the Secretary, so that all requirements placed upon an operation are consistent and uniform.

VIII: Resolution of Conflict

A. Every effort will be made to resolve errors, omissions and conflicts on data and data analysis at the State and field level.

B. Areas of disagreement between the State and the Department shall be referred to the Governor and the Secretary for resolution.

[47 FR 44217, Oct. 6, 1982]

PART 910—GEORGIA

Sec.

910.700 General.
910.701 General.
910.707 Exemption for coal extraction incident to government-financed highway or other construction.
910.761 Areas designated unsuitable for surface coal mining by Act of Congress.
910.762 Criteria for designating areas as unsuitable for surface coal mining operations.
910.764 Process for designating areas unsuitable for surface coal mining operations.
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910.770 General requirements for permits and exploration procedures.
910.771 General requirements for permits and permit applications.
910.776 General requirements for coal exploration.
910.778 Surface mining permit applications—minimum requirements for legal, financial, compliance, and related information.
910.779 Surface mining permit applications—minimum requirements for information on environmental resources.
910.780 Surface mining permit applications—minimum requirements for reclamation and operation plan.
910.782 Underground mining permit applications—minimum requirements for legal, financial, compliance, and related information.
910.783 Underground mining permit applications—minimum requirements for information on environmental resources.
910.784 Underground mining permit applications—minimum requirements for reclamation and operation plan.
910.785 Requirements for permits for special categories of mining.
910.786 Review, public participation, and approval or disapproval of permit applications and permit terms and conditions.
910.787 Administrative and judicial review of decisions on permit applications.
910.788 Permit reviews, revisions, and renewals, and transfer, sale, and assignment of rights granted under permits.
910.795 Small operator assistance.
910.800 General requirements for bonding of surface coal mining and reclamation operations.
910.815 Performance standards—coal exploration.
910.816 Performance standards—surface mining activities.
910.817 Performance standards—underground mining activities.
910.818 Special performance standards—concurrent surface and underground mining.
910.819 Special performance standards—auger mining.
910.823 Special performance standards—operations on prime farmland.
910.824 Special performance standards—mountaintop removal.
910.826 Special performance standards—operations on steep slopes.
910.827 Special performance standards—coal processing plants and support facilities not located at or near the minesite or not within the permit area for a mine.
910.828 Special performance standards—in situ processing.
910.842 Federal inspections.

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910.843 Federal enforcement.
910.845 Civil penalties.
910.955 Certification of blasters.

AUTHORITY: Pub. L. 95-87, The Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201 *et seq.*

SOURCE: 47 FR 36399, Aug. 19, 1982, unless otherwise noted.

910.700 General.

(a) This part contains all rules that are applicable to surface coal mining operations in Georgia which have been adopted under the Surface Mining Control and Reclamation Act of 1977.

(b) The rules in this part cross-reference pertinent parts of the permanent program regulations in this chapter. The full text of a rule is in the permanent program rule cited under the relevant section of the Georgia Federal program.

(c) The rules in this part apply to all surface coal mining operations in Georgia conducted on non-Federal and non-Indian lands. The rules in Subchapter D of this chapter apply to operations on Federal lands in Georgia.

(d) The information collection requirements contained in this part do not require approval by the Office of Management and Budget under 44 U.S.C. 3507 because there are fewer than ten respondents annually.

(e) The following provisions of Georgia laws provide, where applicable, for more stringent environmental control and regulation of surface coal mining operations than do the provisions of the Act and the regulations in this chapter. Therefore, pursuant to section 505(b) of the Act, they shall not be construed to be inconsistent with the Act:

(1) Georgia Code Ann. section 56-412 pertaining to limitation of risks for insurance companies.

(2) Georgia Code Ann. section 414-1306 pertaining to the limitation on loan amounts made by banks.

(3) Georgia Safe Dams Act of 1978 and the Rules for Dam Safety, Chapter 391-3-8 of the Rules of the Department of Natural Resources, Environmental Protection Division.

(4) Chapter 391-34 of the rules of the Department of Natural Resources, Enviromental Protection Division, pertaining to solid waste management.

(5) Georgia Seed Laws and Rules and Regulations containing the Noxious Weed List.

(f) The following are Georgia laws that interfere with the achievement of the purposes and requirements of the act and are, in accordance with Section 504(g) of the Act, preempted and superseded:

(1) The Georgia Surface Mining Act of 1968, Georgia Code Ann. Section 43-1401 *et seq.*, but not to the extent that it regulates surface coal mining operations which affect two acres or less or are otherwise not regulated by the Surface Mining Control and Reclamation Act.

(2) Rules for Land Reclamation, Georgia Department of Natural Resources, Environmental Protection Division, Chapter 391-3-3(1976), but not to the extent that such regulations apply to surface coal mining operations which affect two areas or less or are otherwise not regulated by the Surface Mining Control and Reclamation Act.

§ 910.701 General.

Sections 700.5, 700.11, 700.12, 700.13, 700.14, 700.15 and Part 701 of this chapter shall apply to surface coal mining operations in Georgia.

§ 910.707 Exemption for coal extraction incident to government-financed highway or other construction.

Part 707 of this chapter, *Exemption for Coal Extraction Incidental to Government-Financed Highway or Other Construction*, shall apply to surface coal mining and reclamation operations.

§ 910.761 Areas designated unsuitable for surface coal mining by Act of Congress.

Part 761 of this chapter, Areas Designated by act of Congress, shall apply to surface coal mining and reclamation operations.

§ 910.762 Criteria for designating areas as unsuitable for surface coal mining operations.

Part 762 of this chapter, *Criteria for Designating Areas Unsuitable for Surface Coal Mining Operations*, shall apply to surface coal mine operations beginning on April 9, 1983.

§ 910.764 Process for designating areas unsuitable for surface coal mining operations.

Part 764 of this chapter, *State Processes for Designating Areas Unsuitable for Surface Coal Mining Operations*, pertaining to petitioning, initial processing, hearing requirements, decisions, data base and inventory systems, public information, and regulatory responsibilities shall apply to surface coal mine operations beginning on April 9, 1983.

§ 910.770 General requirements for permits and exploration procedures.

(a) Part 770 of this chapter, *General Requirements for Permit Systems Under State Programs*, shall apply to surface coal mining and exploration operations.

(b) Issuance of permits shall also be coordinated with permits issued pursuant to the Georgia Water Quality Control Act, section 17-501, the Georgia Solid Waste Management Act, section 43-1681, the Georgia Air Quality Act of 1973, the Georgia Safe Dams Act of 1973, the Georgia Hazardous Waste Management Act of 1979, the Georgia Groundwater Use Act, and the rules of the Georgia Fire Safety Commission on blasters' permits.

(c) The Secretary shall incorporate in the permit applicable requirements of the Georgia Wildflower Preservation Act of 1973, section 43-1801 *et seq.*, the Georgia Endangered Wildlife Act of 1973, section 43-2101 *et seq.*, the Georgia Heritage Trust Act of 1975, section 43-2301 *et seq.*, and the Georgia Cave Protection Act of 1977, section 43-2501 *et seq.*

§ 910.771 General requirements for permits and permit applications.

(a) Part 771 of this chapter, *General Requirements for Permits and Permit Applications*, shall apply to any person who makes application for a permit to conduct surface coal mining operations.

(b) A person who wishes to conduct new surface coal mining and reclamation operations or who wishes a revision of his permit shall file a complete application at least 12 months prior to the date upon which permit issuance or revision is desired, and shall pay to the Secretary a permit fee in accordance with § 736.25 of this chapter.

§ 910.776 General requirements for coal exploration.

(a) Part 776 of this chapter, *General Requirements for Coal Exploration*, shall apply to any person who conducts or seeks to conduct coal exploration operations.

(b) The Office shall make every effort to act on an exploration application within 60 days of receipt or such longer time as may be reasonable under the circumstances. If additional time is needed, OSM shall notify the applicant that the application is being reviewed, but more time is necessary to complete such review, setting forth the reasons and the additional time that is needed.

§ 910.778 Surface mining permit application—minimum requirements for legal, financial, compliance and related information.

Part 778 of this chapter, *Surface Mining Permit Applications—Minimum Requirements for Legal, Financial, Compliance, and Related Information*, shall apply to any person who makes application for a permit to conduct surface coal mining and reclamation operations.

§ 910.779 Surface mining permit applications—minimum requirements for information on environmental resources.

Part 779 of this chapter, *Surface Mining Permit Applications—Minimum Requirements for Information on Environmental Resources*, shall apply to any person who makes application to conduct surface coal mining and reclamation operations.

§ 910.780 Surface mining permit applications—minimum requirements for reclamation and operation plan.

(a) Part 780 of this chapter, *Surface Mining Permit Applications—Minimum Requirement for Reclamation and Operation Plan*, shall apply to any person who makes application to conduct surface coal mining and reclamation operations.

(b) The application for a permit shall also demonstrate compliance with the air quality control standards in Chapter 391-3-1 of the Rules and Regulations for Air Quality Control of the Georgia Department of Natural Resources.

§ 910.782 Underground mining permit applications—minimum requirements for legal, financial, compliance, and related information.

Part 782 of this chapter, *Underground Mining Permit Applications—Minimum Requirements for Legal, Financial, Compliance, and Related Information*, shall apply to any person who makes application for a permit to conduct underground mining operations.

§ 910.783 Underground mining permit applications—minimum requirements for information on environmental resources.

Part 783 of this chapter, *Underground Mining Permit Applications—Minimum Requirements for Information on Environmental Resources*, shall apply to any person who submits an application to conduct underground mining operations.

§ 910.784 Underground mining permit applications—minimum requirements for reclamation and operation plan.

(a) Part 784 of this chapter, *Underground Mining Permit Applications—Minimum Requirements for Reclamation and Operation Plan*, shall apply to any person who makes application to conduct underground mining.

(b) The applicant for a permit to conduct underground mining operations shall demonstrate compliance with Chapter 391-3-1 of the Rules and Regulations of the Georgia Department of Natural Resources.

§ 910.785 Requirements for permits for special categories of mining.

Part 785 of this chapter, *Requirements for Permits for Special Categories of Mining*, shall apply to each person who makes application for a permit to conduct certain categories of surface coal mining and reclamation operations.

§ 910.786 Review, public participation, and approval or disapproval of permit applications and permit terms and conditions.

(a) Part 786 of this chapter, *Review, Public Participation, and Approval or Disapproval of Permit Applications and Permit Terms and Conditions*, shall apply to the review of applications made by any person for surface coal mining and reclamation operations.

(b) The applicant for a permit shall place an advertisement in a local newspaper of general circulation concerning the permit after the application is determined complete. Written comments on the application shall be submitted within 30 days of receipt of the application. An informal conference shall be provided within 30 days of a request.

§ 910.787 Administrative and judicial review of decisions on permit applications.

Decisions on permit applications shall be subject to administrative and judicial review in accordance with Part 787 of this chapter and sections 520, 525 and 526 of the Act.

§ 910.788 Permit reviews, revisions, and renewals, and transfer, sale, and assignment of rights granted under permits.

(a) Part 788 of this chapter, *Permit Reviews, Revisions, and Renewals, and Transfer, Sale, and Assignment of Rights Granted Under Permits*, shall apply to review, revision, and renewal of permits for surface coal mine operations, and to transfer, sale, and assignment of rights granted under permits.

(b) A person whose interests are or may be affected by permit issuance may file written comments within 30 days of the placement of any advertisement announcing an application for permit transfer, assignment or sale.

§ 910.795 Small operator assistance.

Part 795 of this chapter, *Small Operator Assistance*, shall apply to any person making application for assistance under the small operator assistance program.

§ 910.800 General requirements for bonding of surface coal mining and reclamation operations.

Part 800 of this chapter, *General Requirements for Bonding of Surface Coal Mining and Reclamation Operations Under Regulatory Programs*, shall apply to all surface coal mining and reclamation operations.

§ 910.815 Performance standards—coal exploration.

Part 815 of this chapter, *Permanent Program Performance Standards—Coal Exploration*, shall apply to any person conducting coal exploration operations.

§ 910.816 Performance standards—surface mining activities.

(a) Part 816 of this chapter, *Permanent Program Performance Standards—Surface Mining Activities*, shall apply to any person who conducts surface coal mining and reclamation operations.

(b) No person shall conduct surface coal mining operations except in compliance with the Georgia Safe Dams Act and Rules for Safety of the Department of Natural Resources, Environmental Protection Division, as provided in § 816.49(a) of this chapter, the Solid Waste Management Rules of the Georgia Department of Natural Resources Environmental Protection Division, Chapter 391-3-4, as provided in § 816.89(b) of this chapter, and the Georgia Seed Laws and Regulation 4, as provided in § 816.112(d) of this chapter.

§ 910.817 Performance standards—underground mining activities.

(a) Part 817 of this chapter, *Permanent Program Performance Standards—Underground Mining Activities*, shall apply to any person who conducts underground mining operations.

(b) No person shall conduct underground coal mining operations except in compliance with the Georgia Safe Dams Act and Rules for Safety of the Department of Natural Resources, Environmental Protection Division, as provided in § 817.49(a) of this chapter, the Georgia Solid Waste Mangement Rules of the Department of Natural Resources, Environmental Protection Division, Chapter 391-3-4, as provided in § 817.89(b) of this chapter, and the Georgia Seed Laws and Regulation 4 as provided in § 817.112(d) of this chapter.

§ 910.818 Special performance standards—concurrent surface and underground mining.

Part 818 of this chapter, *Special Permanent Program Performance Standards—Concurrent Surface and Underground Mining*, shall apply to any person who conducts combined surface and underground mining operations.

§ 910.819 Special performance standards—auger mining.

Part 819 of this chapter, *Special Permanent Program Performance Standards—Auger Mining*, shall apply to any person who conducts surface coal mining operations which include auger mining.

§ 910.823 Special performance standards—operations on prime farmland.

Part 823 of this chapter, *Special Permanent Program Performance Standards—Operations on Prime Farmland*, shall apply to any person who conducts surface coal mining and reclamation operations on prime farmlands.

§ 910.824 Special performance standards—mountaintop removal.

Part 824 of this chapter, *Special Permanent Program Performance Standards—Mountaintop Removal*, shall apply to any person who conducts surface coal mining operations constituting mountaintop removal mining.

§ 910.826 Special performance standards—operations on steep slopes.

Part 826 of this chapter, *Special Permanent Program Performance Standards—Operations on Steep Slopes*, shall apply to any person who conducts surface coal mining and reclamation operations on steep slopes.

§ 910.827 Special performance standards—coal processing plants and support facilities not located at or near the minesite or not within the permit area for a mine.

Part 827 of this chapter, *Special Permanent Program Performance Standards—Coal Processing Plants and Support Facilities Not Located at or Near the Minesite or Not Within the Permit Area for a Mine*, shall apply to any person who conducts surface coal mining and reclamation operations which includes the operation of coal processing plants and support facilities not located at or near the minesite or not within the permit area for a mine.

§ 910.828 Special performance standards—in situ processing.

Part 828 of this chapter, *Special Permanent Program Performance Standards—In Situ Processing*, shall apply to any person who conducts in situ processing activities.

§ 910.842 Federal inspections.

(a) Part 842 of this chapter, *Federal Inspections*, shall apply to all exploration and surface coal mining and reclamation operations.

(b) The Office will furnish a copy of any inspection report or enforcement action taken to the Georgia Department of Natural Resources upon request.

§ 910.843 Federal enforcement.

(a) Part 843 of this chapter, *Federal Enforcement*, shall apply when enforcement action is required for violations on surface coal mining and reclamation operations.

(b) The Office will furnish a copy of each enforcement action and order to show cause issued pursuant to this section to the Georgia Department of Natural Resources upon request.

§ 910.845 Civil penalties.

Part 845 of this chapter, *Civil Penalties*, shall apply when civil penalties are assessed for violations on surface coal mining and reclamation operations.

§ 910.955 Certification of blasters.

Part 955 of this chapter, *Certification of Blasters in Federal Program States and on Indian Lands*, shall apply to the training, examination and certification of blasters for surface coal mining and reclamation operations.

[51 FR 19461, May 29, 1986]

PART 912—IDAHO

Sec.

912.700 Idaho Federal program.
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912.815 Performance standards—coal exploration.
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912.817 Performance standards—underground mining activities.
912.818 Special performance standards—concurrent surface and underground mining.
912.819 Special performance standards—auger mining.
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912.823 Special performance standards—operations on prime farmland.
912.824 Special performance standards—mountaintop removal.
912.826 Special performance standards—operations on steep slopes.
912.827 Special performance standards—coal processing plants and support facilities not located at or near the minesite or not within the permit area for a mine.
912.828 Special performance standards In situ processing.
912.842 Federal inspections.
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912.845 Civil penalties.
912.955 Certification of blasters.

AUTHORITY: Pub. L. 95-87, The Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201 *et seq.*, 91 Stat. 445.

SOURCE: 48 FR 16222, Apr. 14, 1983, unless otherwise noted.

§ 912.700 Idaho Federal program.

(a) This part contains all rules that are applicable to surface coal mining operations in Idaho which have been adopted under the Surface Mining Control and Reclamation Act of 1977.

(b) The rules in this part cross-reference pertinent parts of the permanent program regulations in this chapter. The full text of a rule is in the permanent program rule cited under the relevant section of the Idaho Federal program.

(c) The rules in this part apply to all surface coal mining operations in Idaho conducted on non-Federal and non-Indian lands. The rules in Subchapter D of this chapter apply to operations on Federal lands in Idaho.

(d) The information collection requirements contained §§ 921.764, 921.770, 921.771, 921.795, and 921.800 part do not require approval by the Office of Management and Budget under 44 U.S.C. 3507 because there are fewer than ten respondents annually.

(e) The following provisions of Idaho laws provide, where applicable, for more stringent environmental control and regulation of surface coal mining operations than do the provisions of the Act and the regulations in this chapter. Therefore, pursuant to Section 505(b) of the Act, they shall not be construed to be inconsistent with the Act.

(1) Idaho Code Section 47-1503(20) pertaining to the definition of "operator."

(2) Idaho Code Section 47-1509(c) regarding reclamation of disturbed land of less than 2 acres.

(3) Idaho Code Section 47-1513(c) providing for assessment of anticipated costs of reclamation against an operator.

(4) Idaho Code Sections 47-1513 (f) and (g) providing for assessment of civil penalties in addition to bond forfeiture.

(5) Idaho Code Sections 47-1301 *et seq.* and Rules 1 through 20 promulgated thereunder pertaining to regulation of dredge mining.

(6) Idaho Code Sections 18-4301 and 18-7019 providing for punishment for interference with water sources used in mining operations.

(7) Idaho Code Section 42-1713 requiring a fee to be paid by each owner of a dam, reservoir or mine tailing impoundment structure.

(8) Idaho Code Section 42-1718 (Supp.) providing for assessment against an operator for costs incurred in correction deficiencies in dams and impoundment structures.

(f) The following Idaho statute and regulations interfere with the achievement of the purposes and goals of the Act. Therefore, in accordance with Section 504(g) of the Act, they are preempted and superseded with respect to surface coal mining and reclamation, except as they apply to surface coal mining operations affecting two acres or less, or which otherwise are not regulated by the Surface Mining Control and Reclamation Act:

The Idaho Surface Mining Act, Idaho Code Sections 47-1501—47-1524, as amended, and all regulations issued thereunder (with the exception of Sections 47-1503(20), 47-1509(c), 47-1513(c), and 47-1513 (f) and (g), and all regulations issued thereunder).

§ 912.701 General.

Sections 700.5, 700.11, 700.12, 700.13, 700.14, 700.15 and Part 701 of this chapter shall apply to surface coal mining and reclamation operations in Idaho.

§ 912.707 Exemption for coal extraction incident to Government-financed highway or other construction.

Part 707 of this chapter, *Exemption for Coal Extraction Incident to Government-Financed Highway or Other Construction*, shall apply to surface coal mining and reclamation operations.

§ 912.761 Areas designated unsuitable for surface coal mining by act of Congress.

Part 761 of this chapter, *Areas Designated by Act of Congress*, shall apply to surface coal mining and reclamation operations.

§ 912.762 Criteria for designating areas as unsuitable for surface coal mining operations.

Part 762 of this chapter, *Criteria for Designating Areas Unsuitable for Surface Coal Mining Operations*, shall apply to surface mining and reclamation operations.

§ 912.764 Process for designating areas unsuitable for surface coal mining operations.

Part 764 of this chapter, *State Processes for Designating Areas Unsuitable for Surface Coal Mining Operations*, pertaining to petitioning, initial processing, hearing requirements, decisions, data base and inventory systems, public information, and regulatory responsibilities shall apply to surface coal mining and reclamation operations.

§ 912.770 General requirements for permits and exploration procedures.

(a) Part 770 of this chapter, *General Requirements for Permit Systems Under State Programs*, shall apply to surface coal mining, reclamation, and exploration operations.

(b) Where applicable, no person shall conduct surface coal exploration operations which result in the removal of more than 250 tons in one location, or surface coal mining operations without permits issued and/or certificates required by the State of Idaho, pursuant to Idaho Code sections 47-704, 47-1317, 47-1318, 47-1319, 47-1317 (Supp.), and 39-101 *et seq.* (Supp.).

§ 912.771 General requirements for permits and permit applications.

(a) Part 771 of this chapter, *General Requirements for Permits and Permit Applications*, shall apply to any person who makes application for a permit to conduct surface coal mining and reclamation operations.

(b) A person who wishes to conduct new surface coal mining and reclamation operations or who wishes a revision of his permit shall file a complete application at least 12 months prior to the date upon which permit issuance or revision is desired, and shall pay to the Secretary a permit fee in accordance with § 736.25 of this chapter.

§ 912.776 General requirements for coal exploration.

(a) Part 776 of this chapter, *General Requirements for Coal Exploration*, shall apply to any person who conducts or seeks to conduct coal exploration operations.

(b) The Office shall make every effort to act on an exploration application within 60 days of receipt or such longer time as may be reasonable under the circumstances. If additional time is needed, OSM shall notify the applicant that the application is being reviewed, but more time is necessary to complete such review, setting forth the reasons and the additional time that is needed.

§ 912.778 Surface mining permit applications—minimum requirements for legal, financial, compliance, and related information.

Part 778 of this chapter, *Surface Mining Permit Applications—Minimum Requirements for Legal, Financial, Compliance, and Related Information*, shall apply to any person who makes application for a permit to conduct surface coal mining and reclamation operations.

§ 912.779 Surface mining permit applications—minimum requirements for information on environmental resources.

Part 779 of this chapter, *Surface Mining Permit Applications—Minimum Requirements for Information on Environmental Resources*, shall apply to any person who makes application to conduct surface coal mining and reclamation operations.

§ 912.780 Surface mining permit applications—minimum requirements for reclamation and operation plan.

Part 780 of this chapter, *Surface Mining Permit Applications—Minimum Requirements for Reclamation and Operation Plan*, shall apply to any person who makes application to conduct surface coal mining and reclamation operations.

§ 912.782 Underground mining permit applications—minimum requirements for legal, financial, compliance, and related information.

Part 782 of this chapter, *Underground Mining Permit Applications—Minimum requirements for Legal, Financial, Compliance, and Related Information*, shall apply to any person who makes application for a permit to conduct underground coal mining operations.

§ 912.783 Underground mining permit applications—minimum requirements for information on environmental resources.

Part 783 of this chapter, *Underground Mining Permit Applications—Minimum Requirements for Information on Environmental Resources*, shall apply to any person who submits an application to conduct underground coal mining operations.

§ 912.784 Underground mining permit applications—minimum requirements for reclamation and operation plan.

Part 784 of this chapter, *Underground Mining Permit Applications—Minimum Requirements for Reclamation and Operation Plan*, shall apply to any person who makes application to conduct underground coal mining.

§ 912.785 Requirements for permits for special categories of mining.

Part 785 of this chapter, *Requirements for Permits for Special Categories of Mining*, shall apply to each person who makes application for a permit to conduct certain categories of surface coal mining and reclamation operations as specified therein.

§ 912.786 Review, public participation, and approval or disapproval of permit applications and permit terms and conditions.

Part 786 of this chapter, *Review, Public Participation, and Approval or Disapproval of Permit Applications and Permit Terms and Conditions*, shall apply to the review of applications made by any person for surface coal mining and reclamation operations.

§ 912.787 Administrative and judicial review of decisions on permit applications.

Decisions on permit applications shall be subject to administrative and judicial review in accordance with Part 787 of this chapter and sections 520, 525, and 526 of the Act.

§ 912.788 Permit reviews, revisions, and renewals, and transfer, sale, and assignment of rights granted under permits.

Part 788 of this chapter, *Permit Reviews, Revisions, and Renewals, and Transfer, Sale, and Assignment of Rights Granted Under Permits*, shall apply to review, revision, and renewal of permits for surface coal mine operations, and to transfer, sale, and assignment of rights granted under permits.

§ 912.795 Small operator assistance.

Part 795 of this chapter, *Small Operator Assistance,* shall apply to any person making application for assistance under the small operator assistance program.

§ 912.800 General requirements for bonding of surface coal mining and reclamation operations.

Part 800 of this chapter, *General Requirements for Bonding of Surface Coal Mining and Reclamation Operations Under Regulatory Programs,* shall apply to all surface coal mining and reclamation operations.

§ 912.815 Performance standards—coal exploration.

Part 815 of this chapter, *Permanent Program Performance Standards—Coal Exploration,* shall apply to any person conducting coal exploration operations.

§ 912.816 Performance standards—surface mining activities.

Part 816 of this chapter, *Permanent Program Performance Standards—Surface Mining Activities,* shall apply to any person who conducts surface coal mining and reclamation operations.

§ 912.817 Performance standards—underground mining activities.

Part 817 of this chapter, *Permanent Program Performance Standards—Underground Mining Activities,* shall apply to any person who conducts underground coal mining operations.

§ 912.818 Special performance standards—concurrent surface and underground mining.

Part 818 of this chapter, *Special Permanent Program Performance Standards—Concurrent Surface and Underground Mining,* shall apply to any person who conducts combined surface and underground coal mining operations.

§ 912.819 Special performance standards—auger mining.

Part 819 of this chapter, *Special Permanent Program Performance Standards—Auger Mining,* shall apply to any person who conducts surface coal mining operations which include auger mining.

§ 912.822 Special performance standards—operations in alluvial valley floors.

Part 822 of this chapter, *Special Permanent Program Performance Standards—Operations in Alluvial Valley Floors,* shall apply to any person who conducts surface coal mining and reclamation operations on alluvial valley floors.

§ 912.823 Special performance standards—operations on prime farmland.

Part 823 of this chapter, *Special Permanent Program Performance Standards—Operations on Prime Farmland,* shall apply to any person who conducts surface coal mining and reclamation operations on prime farmlands.

§ 912.824 Special performance standards—mountaintop removal.

Part 824 of this chapter, *Special Permanent Program Performance Standards—Mountaintop Removal,* shall apply to any person who conducts surface coal mining operations constituting mountaintop removal mining.

§ 912.826 Special performance standards—operations on steep slopes.

Part 826 of this chapter, *Special Permanent Program Performance Standards—Operations on Steep Slopes,* shall apply to any person who conducts surface coal mining and reclamation operations on steep slopes.

§ 912.827 Special performance standards—coal processing plants and support facilities not located at or near the minesite or not within the permit area for a mine.

Part 827 of this chapter, *Special Permanent Program Performance Standards—Coal Processing Plants and Support Facilities Not Located at or Near the Minesite or Not Within the Permit Area for a Mine,* shall apply to any person who conducts surface coal mining and reclamation operations which includes the operation of coal processing plants and support facilities not located at or near the minesite or not within the permit area for a mine.

§ 912.828 Special performance standards—in situ processing.

Part 828 of this chapter, *Special Permanent Program Performance Standards—In Situ Processing*, shall apply to any person who conducts in situ processing activities.

§ 912.842 Federal inspections.

(a) Part 842 of this chapter, *Federal Inspections*, shall apply to all exploration and surface coal mining and reclamation operations.

(b) The Secretary will furnish a copy of each inspection report regarding inspections conducted pursuant to this section to the Office of the Idaho Attornery General upon request.

§ 912.843 Federal enforcement.

(a) Part 843 of this chapter, *Federal Enforcement*, shall apply when enforcement action is required for violations on surface coal mining and reclamation operations.

(b) The Office will furnish a copy of each enforcement action and order to show cause issued pursuant to this section to the Office of the Idaho Attorney General upon request.

§ 912.845 Civil penalties.

Part 845 of this chapter, *Civil Penalties*, shall apply when civil penalties are assessed for violations on surface coal mining and reclamation operations.

§ 912.955 Certification of blasters.

Part 955 of this chapter, *Certification of Blasters in Federal Program States and on Indian Lands*, shall apply to the training, examination and certification of blasters for surface coal mining and reclamation operations.

[51 FR 19462, May 29, 1986]

PART 913—ILLINOIS

Sec.
913.1 Scope.
913.10 State regulatory program approval.
913.11 Conditions of State regulatory program approval.
913.15 Approval of regulatory program amendments.
913.16 Required program amendments.
913.20 Approval of Illinois abandoned mine land reclamation plan.

AUTHORITY: Pub. L. 95-87, Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*).

§ 913.1 Scope.

This part contains all rules applicable only within Illinois that have been adopted under the Surface Mining Control and Reclamation Act of 1977.

[47 FR 23883, June 1, 1982]

§ 913.10 State regulatory program approval.

The Illinois State program, as submitted on March 3, 1980, as amended and clarified on June 16, 1980, as resubmitted on December 22, 1981, and clarified in a meeting with OSM on March 18 and 19, 1982, in material submitted April 13, 1982, and in the letter to the Director of OSM, is conditionally approved effective June 1, 1982. Beginning on that date, the Department of Mines and Minerals, Division of Land Reclamation shall be deemed the regulatory authority in Illinois for all surface coal mining and reclamation operations and all exploration operations on non-Federal and non-Indian lands. Only surface coal mining and reclamation operations on non-Federal and non-Indian lands shall be subject to the provisions of the Illinois permanent regulatory program. Copies of the approved program, together with copies of the letter of the Department of Mines and Minerals agreeing to the conditions of 30 CFR 913.11, are available at:

Illinois Department of Mines and Minerals, Division of Land Reclamation, 227 South 7th Street, Suite 204, Springfield, Illinois 62706

Illinois Department of Mines and Minerals, Division of Land Reclamation, Southern District Field Office, Route 6, Box 140A, Marion, Illinois 62959

Office of Surface Mining, Federal Building and U.S. Courthouse, Fifth Floor, Room 510, 46 East Ohio Street, Indianapolis, Indiana 46204

Office of Surface Mining, Administrative Record, Room 5315, 1100 "L" Street, NW., Washington, D.C.

[47 FR 23883, June 1, 1982]

§ 913.11 Conditions of State regulatory program approval.

The approval of the Illinois State program is subject to the State revising its program to correct the deficiencies listed in this section. The program revisions may be made, as appropriate, to the statute, the regulations, the program narrative, or the Attorney General's opinion. This Section indicates, for the general guidance of the State, the component of the program to which the Secretary recommends the change be made.

(a) [Reserved]

(b) The approval found in § 913.10 will terminate unless Illinois submits to the Secretary by March 30, 1986, copies of promulgated regulations or otherwise amends its program to require a cover of the pit floor and highest coal seam with a minimum of ten meters (33 feet) of water. Furthermore, pending completion of the above, Illinois may not use its authority to approve covering with less than 10 meters of water or the approval will terminate immediately.

(c) The approval found in § 913.10 will terminate unless Illinois submits to the Secretary by March 30, 1986, a policy statement or otherwise amends its program to the effect that Illinois understands that at the present time, the best technology currently available for sediment control is sedimentation ponds and should Illinois wish to approve any other technology, the State will first send the proposal to OSM for review and approval as either an experimental practice or a program amendment. Furthermore, pending completion of the above, Illinois may not use its authority to approve siltation structures other than sedimentation ponds or the approval will terminate immediately.

[47 FR 23883, June 1, 1982, as amended at 48 FR 23414, May 25, 1983; 48 FR 37626, Aug. 19, 1983; 48 FR 51621, Nov. 10, 1983; 50 FR 9621, Mar. 11, 1985; 50 FR 45113, Oct. 30, 1985]

§ 913.15 Approval of regulatory program amendments.

(a) The following amendment was approved effective November 23, 1982: Illinois revised rule 1823.14(a), adopted August 13, 1982.

(b) The following amendments were approved effective May 25, 1983: Illinois revised rules 1816.64(a) and 1807.11(d), adopted December 10, 1982.

(c) The following amendment that was submitted to OSM July 27, 1983 is approved effective upon promulgation of the revised rule by the State, provided the rule is adopted in identical form as submitted to OSM: Illinois revised rule 1786.19(h).

(d) The following amendments submitted to OSM on August 11, 1983, are approved effective upon publication of the revised rules by the State, provided the rules are adopted in identical form as submitted to OSM: Illinois revised rules 1817.65 and 1843.12.

(e) The following amendment submitted to OSM on March 16, 1984, and modified on July 19, 1984, is approved effective upon promulgation of the revised rule by the State, provided the rule adopted is identical to the rule submitted to and reviewed by OSM: Illinois revised rule 1785.17(a).

(f) The following amendment submitted to OSM on September 27, 1984, is approved effective upon promulgation of the revised rule by the State, provided the rule is adopted in identical form as submitted to OSM: Illinois Administrative Code Secs. 1816.190 and 1817.190.

(g) The following amendments submitted to OSM on December 23, 1983, and modified on March 29, 1985 and August 16, 1985, are approved effective October 30, 1985. Illinois Administrative Code Part 1850.

[48 FR 23414, May 25, 1983, as amended at 48 FR 46529, Oct. 13, 1983; 48 FR 51621, Nov. 1, 1983; 49 FR 38264, Sept. 28, 1984; 50 FR 1509, Jan. 11, 1985; 50 FR 45111, Oct. 30, 1985]

§ 913.16 Required program amendments.

Pursuant to 30 CFR 732.17, Illinois is required to make the following program amendments:

(a) Amend the definition of "intermittent stream" in rule 1701.5 to make it no less effective than the Federal definition of "intermittent stream" at 30 CFR 701.5.

(b) [Reserved]

(c) Amend rule 1785.17 and 1823 to be no less effective than the Federal rules at 30 CFR 785.17 and 823 which set forth the applicability of the prime farmland permitting requirements and performance standards.

(d) Amend rule 1816.46 to provide sediment pond design and performance standards no less effective than 30 CFR 816.46.

(e) Amend rule 1816.64 to provide written notification on how to request a preblasting survey to all residents within one-half mile of the permit area, consistent with 30 CFR 816.62.

(f) Amend rule 1816.65 to prohibit casting of flyrock more than one-half the distance to the nearest dwelling or other occupied structure, consistent with 30 CFR 816.67.

[49 FR 13521, Apr. 5, 1984, as amended at 49 FR 38264, Sept. 28, 1984]

§ 913.20 Approval of Illinois Abandoned Mine Land Reclamation Plan.

The Illinois Abandoned Mine Land Reclamation Plan, as submitted on July 20, 1980, and amended on June 11, 1984, is approved. Copies of the approved Plan, as amended, are available at:

Office of Surface Mining Reclamation and Enforcement, Springfield Field Office, 600 East Monroe, Room 20, Springfield, Illinois 62701

Illinois Department of Mines and Minerals, AML Reclamation Council, First Floor, Alzina Building, 100 North First Street, Springfield, Illinois 62701

Office of Surface Mining Reclamation and Enforcement, Administrative Record, 1100 "L" Street, NW., Room 5315, Washington, D.C. 20005

[49 FR 24021, June 11, 1984]

PART 914—INDIANA

Sec.
914.1 Scope.
914.10 State regulatory program approval.
914.15 Approval of regulatory program amendments.
914.16 Required program amendments.
914.20 Approval of Indiana abandoned mine plan.

Authority: Pub. L. 95-87, Surface Mining Control and Reclamation Act of 1977, (30 U.S.C. 1201 *et seq.*).

§ 914.1 Scope.

This part contains all rules applicable only within Indiana that have been adopted under the Surface Mining Control and Reclamation Act of 1977.

[47 FR 32107, July 26, 1982]

§ 914.10 State regulatory program approval.

(a) The Indiana State Program, as submitted on March 3, 1980, as amended and clarified on June 4, 1980, as resubmitted on September 28, 1981, and clarified on December 8, 1981, April 8, 1982, May 18-19, 1982, and May 26, 1982, is conditionally approved, effective July 29, 1982. Beginning on that date, the Indiana Department of Natural Resources shall be deemed the regulatory authority in Indiana for all surface coal mining and reclamation operations and all coal exploration operations on non-Federal and non-Indian lands. Only surface coal mining and reclamation operations on non-Federal and non-Indian lands shall be subject to the provisions of the Indiana permanent regulatory program.

(b) Beginning on August 19, 1983 the Indiana program, as amended as set forth in 30 CFR 914.15, is fully approved.

(c) Copies of the approved program are available for review at:

Office of Surface Mining, 1100 L Street NW., Room 5315, Washington DC 20210

Office of Surface Mining, 46 East Ohio Street, Indianapolis, Indiana 46204

Indiana Department of Natural Resources, 309 W. Washington Street, Suite 202, Indianapolis, Indiana 46204.

[48 FR 37631, Aug. 19, 1983]

§ 914.15 Approval of regulatory program amendments.

(a) The following amendment was approved effective December 17, 1982, to meet condition (b)(2): Indiana's revised permit application forms submitted on September 1, 1982, to require the applicant to certify that all reclamation fees due under 30 CFR 870.12 have been paid.

(b) The following amendments were approved effective March 4, 1983:

(1) Indiana revised regulations, submitted on December 9, 1982, to meet conditions (a)(1), (a)(2) in part, (a)(3)-(5), (b)(1), (b)(3) in part, (b)(4)-(6), (c), (d), (e), (f), (g)(2), and (i). These revi-

sions were made to 310 IAC 12-2-7, 12-2-9, 12-3-12(c)(2), 12-3-25, 12-3-37(a), 12-3-47(b), 12-3-48, 12-3-74(a), 12-3-97, 12-4-5, 12-4-10(e)(1), 12-4-16, 12-5-3, 12-5-18, 12-5-51, 12-5-84, 12-5-115, 12-5-123(b), 12-5-149 (repealed), 12-5-152, 12-6-6 (d) and (f), 12-6-6.5, 12-6-16(b)(3)(ii), and 12-7-4(f).

(2) Other Indiana revised regulations, submitted on December 9, 1982, to revise 310 IAC 12-3-1, 12-3-21(b)(4), 12-3-59(b)(4), 12-3-81, 12-3-102(c), 12-5-24(f), and 12-5-90(f).

(c) The following amendments were approved effective August 19, 1983:

(1) Revisions to the Indiana statute submitted on April 28, 1983, to meet conditions (g)(1) and (h). These revisions were made to IC 13-4.1-14-2(a), 13-4.1-11-11(i), and 13-4.1-4-5(c).

(2) Other revisions to the Indiana statute submitted on April 28, 1983, at IC 13-4.1-2-3, and 13-4.1-7-5.

(3) Indiana revised regulations submitted on April 19, 1983, to meet conditions (a)(2) and (b)(3). These revisions were made to 310 IAC 12-3-63, 12-5-19 and 12-5-85.

(4) Other revisions to the Indiana regulations submitted on April 19, 1983. These revisions were made to 310 IAC 12-1-3, 12-3-12, 12-3-39, 12-3-76, 12-3-112, 12-3-118, 12-4-3, 12-4-4, 12-4-7, 12-4-17, 12-5-36, 12-5-41, 12-5-71.5, 12-5-101, 12-5-105, 12-5-139.5, 12-6-1 (except to the proposed modification to the definition of a complete inspection as contained in 12-6-1(b)), 12-6-4, 12-6-5, 12-6-6.5, 12-6-9, 12-6-15, and 12-6-16.

(d) The following amendments are approved effective July 10, 1984. Revisions submitted March 5, 1984, to the Indiana Statute at IC 13-4.1-2-4, 13-4.1-3-3, 13-4.1-4-3, and 13-4.1-5-7.

(e) The following amendments are approved effective October 19, 1984. Revisions submitted March 19, 1984, amending Indiana regulations at 310 IAC 12-2-8, 12-3-43, 12-3-118, 12-5-6, 12-5-34, 12-5-35, 12-5-36, 12-5-38, 12-5-40, 12-5-73, 12-5-100, 12-5-101, and 12-5-103, and adding section 310 IAC 12-5-100.5; with the exception of those provisions identified in § 914.16(b) which require further amendment.

(f) The following amendments are approved effective May 13, 1985. Revisions to the Indiana Statute as contained in Senate Bill 28, submitted February 7, 1985, as modified on March 22, 1985. The bill amends provisions at IC 13-4-6-1.5, IC 13-4.1-3-1, IC 13-4.1-8-1, IC 13-4.1-10-1, IC 13-4.1-12-1, and IC 13-4.1-12-2; and adds IC 13-4-6-1.6, IC 13-4.1-1-7, IC 13-4.1-3-3.5, IC 13-4.1-5-8, and IC 13-4.1-6-9.

(g) The following amendments submitted December 7, 1984, are approved effective May 15, 1985: revisions amending Indiana regulations at 310 IAC 12-2-11, 12-3-46, 12-3-80, 12-3-96, 12-3-97, 12-3-98, 12-5-3, 12-5-6, 12-5-18, 12-5-19, 12-5-20, 12-5-21, 12-5-23, 12-5-24, 12-5-44, 12-5-69, 12-5-73, 12-5-84, 12-5-85, 12-5-86, 12-5-87, 12-5-89, 12-5-90, 12-5-108, 12-5-137, 12-5-147, and 12-6-2; revisions adding sections 310 IAC 12-5-12.1, 12-5-54.1, 12-5-55.1, 12-5-56.1, 12-5-57.1, 12-5-78.1, 12-5-119.1, 12-5-121.1, 12-5-150.1, and 12-6-9.1; and revisions to repeal sections 310 IAC 12-5-11, 12-5-12, 12-5-13, 12-5-14, 12-5-15, 12-5-54, 12-5-55, 12-5-56, 12-5-57, 12-5-77, 12-5-78, 12-5-79, 12-5-80, 12-5-81, 12-5-118, 12-5-119, 12-5-120, 12-5-121, 12-5-150, 12-5-151, 12-5-152, 12-5-153, and 12-5-154; with the exception of those provisions identified in § 914.16(d) which require further amendments.

(h) The following amendments are approved effective May 16, 1985, provided they are adopted by the State in the identical form as submitted to and approved by the Office of Surface Mining. Revisions submitted May 29, 1984, as modified in letters dated October 25, 1984 and November 5, 1984, amending Indiana regulations by adding 310 IAC 0.5 and a policy statement signed on October 16, 1984, and submitted October 25, 1984, with the exception of those provisions identified in § 914.15(c) which require further amendment.

(i) The following amendments submitted by the Indiana Department of Natural Resources to OSM on February 18, 1985 are approved effective June 5, 1985; revisions amending Indiana regulations at 310 IAC 12-3-26, 12-3-64, 12-3-106, 12-3-107 and 12-3-108.

(j) The following amendments submitted by the Indiana Department of Natural Resources to OSMRE on September 4, 1985, are approved effective

March 17, 1986: Indiana's blaster training, examination and certification program as contained in the Indiana regulations at 310 IAC 12-1-3, 310 IAC 12-5-33, 310 IAC 12-5-99, 310 IAC 12-8-1, 310 IAC 12-8-2, 310 IAC 12-8-3, 310 IAC 12-8-4, 310 IAC 12-8-5, 310 IAC 12-8-6, 310 IAC 12-8-7, 310 IAC 12-8-8, 310 IAC 12-8-9 and in the blaster training program.

(k) The following amendments submitted by the Indiana Department of Natural Resources to OSMRE on December 10, 1985, are approved effective March 14, 1986: amendments to the Indiana regulations at 310 IAC 0.5-1-1, 310 IAC 0.5-1-2, 310 IAC 0.5-1-3, 310 IAC 0.5-1-4, 310 IAC 0.5-1-5, 310 IAC 0.5-1-8, 310 IAC 0.5-1-9, 310 IAC 0.5-1-10, 310 IAC 0.5-1-11, 310 IAC 0.5-1-12, 310 IAC 0.5-1-13, 310 IAC 0.5-1-15, 310 IAC 0.5-1-16, 310 IAC 0.5-1-17, 310 IAC 0.5-1-18, 310 IAC 0.5-1-19; and the advisory letter from the Indiana State Office of the Attorney General dated April 23, 1985.

(l) The following amendments submitted by the Indiana Department of Natural Resources to OSMRE on December 16, 1985, are approved effective March 14, 1986: amendments to the Indiana regulations at 310 IAC 12-5-148.

(m) The following amendments submitted by the Indiana Department of Natural Resources to OSMRE on January 31, 1986, are approved effective May 13, 1986: amendments to the Indiana regulations at 310 IAC 12-6-11, 310 IAC 12-6-12, 310 IAC 12-6-12.5, 310 IAC 12-3-121, 310 IAC 12-5-34, 310 IAC 12-5-36, 310 IAC 12-5-100 and 310 IAC 12-5-101.

[48 FR 37631, Aug. 19, 1983; 49 FR 28055, July 10, 1984; 49 FR 41023, Oct. 19, 1984; 50 FR 19930, May 13, 1985; 50 FR 20209, May 15, 1985; 50 FR 20416, May 16, 1985, 50 FR 23686, June 6, 1985; 51 FR 8824, Mar. 14, 1986; 51 FR 9008, Mar. 17, 1986; 51 FR 17480, May 13, 1986]

§ 914.16 Required program amendments.

Pursuant to 30 CFR 732.17, Indiana is required to submit for OSM's approval the following proposed program amendments by the dates specified.

(a)-(b) [Reserved]

(c) By July 15, 1985 Indiana shall submit for OSM approval:

(1) An amendment to 310 IAC 0.5-1.14(a) to allow intervention by a person who has an interest which is or may be adversely affected by the outcome of the proceeding.

(2) [Reserved]

(d) By July 15, 1985 Indiana shall submit for OSM approval: an amendment to 310 IAC 12-5-56.1(b) and 310 IAC 12-5-121.1(b) to render the rules no less effective than 30 CFR 816.95(b) and 817.95(b), respectively; and an amendment to 310 IAC 12-5-12.1(a)(3) and 310 IAC 12-5-78.1(a)(3) to remove the term "permanent impoundments" from the listing of sites for which topsoil need not be removed.

[49 FR 41023, Oct. 19, 1984 and 50 FR 13567, Apr. 5, 1985, as amended at 50 FR 20209, May 15, 1985; 50 FR 20416, May 16, 1985; 51 FR 8824, Mar. 14, 1986; 51 FR 9008, Mar. 17, 1986; 51 FR 17481, May 13, 1986]

§ 914.20 Approval of Indiana abandoned mine plan.

The Indiana Abandoned Mine Plan, as submitted and revised is approved. Copies of the approved program are available at:

The Office of Surface Mining Reclamation and Enforcement, Indiana State Office, Room 524, U.S. Court House and Federal Building, 46 East Ohio Street, Indianapolis, Indiana 46207

State of Indiana, Department of Natural Resources, 608 State Office Building, Indianapolis, Indiana 46204

[47 FR 32110, July 26, 1982]

PART 915—IOWA

Sec.
915.1 Scope.
915.10 State regulatory program approval.
915.11 Conditions of State regulatory program approval [Reserved]
915.15 Approval of regulatory program amendments.
915.20 Approval of Iowa abandoned mine plan.

§ 915.1 Scope.

This part contains all rules applicable only within Iowa which have been adopted under the Surface Mining Control and Reclamation Act of 1977.

(Secs. 102, 201, and 503, Pub. L. 95-87 (30 U.S.C. 1202, 1211, and 1253))

[46 FR 5891, Jan. 21, 1981]

§ 915.10 State regulatory program approval.

The Iowa program as submitted February 28, 1980, and as amended and clarified June 11, 1980, and December 15, 1980, was approved effective April 10, 1981. The amendments submitted October 1, 1981, were approved effective May 26, 1982. The amendments submitted June 3, 1982, were approved effective September 8, 1982. The amendments submitted September 28, 1982 were approved effective January 4, 1983. Copies of the approved program, as amended, are available at:

(a) Iowa Department of Soil Conservation, Mines and Minerals Division, Wallace State Office Building, Des Moines, Iowa 50319.

(b) Office of Surface Mining, Scarritt Building, 818 Grand Avenue, Kansas City, Missouri 64106.

(c) Office of Surface Mining, Administrative Record, Room 5315, 1100 L Street, N.W., Washington, D.C. 20240.

(Secs. 102, 201, and 503, Pub. L. 95-87 (30 U.S.C. 1202, 1211, and 1253))

[48 FR 245, Jan. 4, 1983]

§ 915.15 Approval of regulatory program amendments.

(a) The following amendments are approved effective December 7, 1984: Iowa subrules 4.523(63) and 4.322(14), pertaining to subsidence control; public notice and prime farmland, respectively submitted May 9, 1984.

(b) The following amendments submitted to OSM on January 31, 1985 and February 5, 1985, are approved effective May 24, 1985: Code of Iowa, 1983, Chapter 83, Section 15; IAC 780-4.6 (83), and 780-4.42(1)(83).

(c) [Reserved]

(d) The following amendments submitted to OSMRE on July 25 and 26, 1985, and modified on February 13, and March 4, 1986, are approved effective May 9, 1986: Iowa Administrative Code 780-4.35(6), 780-4.361(9), 780-4.321(8), 780-4.35(1), 780-4.37(2), 780-4.6(1), 780-4.6(4), and 780-Chapter 26.

(e) The following amendments submitted to OSM on June 28, 1985, are approved effective December 6, 1985: Iowa Code, Chapter 29, Sections 83.10, 83.14, and 83.15 (Code 1985).

(Pub. L. 95-87, (30 U.S.C. 1201 *et seq.*))

[49 FR 47835, Dec. 7, 1984 and 50 FR 21442, May 24, 1985, as amended at 50 FR 49927, Dec. 6, 1985; 51 FR 17178, May 9, 1986]

§ 915.20 Approval of Iowa abandoned mine plan

The Iowa Abandoned Mine Plan, as submitted and revised is approved.

Copies of the approved program are available at:

Office of Surface Mining Reclamation and Enforcement, Missouri Field Office, 818 Grand Avenue, Kansas City, Missouri 64106.

Iowa Department of Soil Conservation, Wallace State Office Building, Des Moines, Iowa 50319.

(Pub. L. 95-87, 30 U.S.C. 1201 *et seq.*)

[48 FR 12713, Mar. 28, 1983]

PART 916—KANSAS

Sec.
916.1 Scope.
916.10 State regulatory program approval.
916.15 Approval of regulatory program amendments.
916.16 Required program amendments [Reserved].
916.20 Approval of Kansas abandoned mine land reclamation plan.

AUTHORITY: Secs. 102, 201, and 503, Pub. L. 95-87 (30 U.S.C. 1202, 1211, and 1253).

§ 916.1 Scope.

This part contains all rules applicable only within Kansas which have been adopted under the Surface Mining Control and Reclamation Act of 1977.

[46 FR 5898, Jan. 21, 1981]

§ 916.10 State regulatory program approval.

The Kansas State program as submitted on February 26, 1980, and amended on October 31, 1980, is conditionally approved, effective January 21, 1981. Beginning on that date, the Kansas Mined Land Conservation and Reclamation Board shall be deemed the regulatory authority in Kansas for all surface coal mining and reclamation operations on non-Federal and non-Indian lands. Copies of the approved program, as amended, are available at:

(a) Office of Surface Mining, Kansas City Field Office, Scarritt Building, 818 Grand Avenue, Kansas City, Missouri 64106.
(b) Mined Land Office, 107 West 11th Street, Pittsburg, Kansas 66762.
(c) Kansas Corporation Commission, Legal Office, 4th Floor, State Office Building, 915 Harrison, Topeka, Kansas 66612.
(d) Office of Surface Mining, Administrative Record, Room 5315, 1100 L Street, NW., Washington, D.C. 20240.

[48 FR 8446, Mar. 1, 1983]

§ 916.15 Approval of regulatory program amendments.

(a) The following amendments were approved effective April 14, 1982:

(1) Amended sections 49-411, 49-412, and 49-422a of the Kansas Mined Land Conservation and Reclamation Act (MLCRA), adopted May 14, 1981.

(2) Sections 49-413, 49-414, 49-421, 49-416, and 49-422 of the MLCRA were repealed upon adoption of House Bill 2182, May 14, 1981.

(3) New section 49-430 of the MLCRA, adopted May 14, 1980.

(b) The following amendments were approved effective March 1, 1983.

(1) Amended sections 49-403, 49-405c, 49-406, and 49-420 of the MLCRA, and new section 10 of House Bill 2182, adopted May 14, 1981.

(2) Kansas revised regulations K.A.R. 47-2-21, 47-8-10, and 47-8-11.

(c) The following amendments submitted to OSM on March 16, 1984, are approved effective June 8, 1984.

(1) Amended section 49-406 of the MLCRA, adopted May 10, 1984;

(2) Kansas regulation K.A.R. 47-1-10.

(d) The following amendment submittted to OSM on December 21, 1984, is approved April 11, 1985. Kansas regulation K.A.R. 47-15-13.

(e) The following amendments submitted April 4, 1985, are approved effective November 15, 1985.

(1) K.S.A 1984 Supp. 49-406(g).

(2) Revisions amending Kansas regulations K.A.R. 47-1-11, K.A.R. 47-2-75, K.A.R. 47-3-42(a)(45), K.A.R. 47-3-42(a)(23), K.A.R. 47-3-42, K.A.R. 47-Article 5, K.A.R. 47-8-9(j), K.A.R. 47-8-9a, K.A.R. 47-9-1, K.A.R. 47-9-2, K.A.R. 47-9-3, K.A.R. 47-13-4, K.A.R. 47-13-5, K.A.R. 47-13-6, and K.A.R. 47-Article 15.

(3) Memoranda of Understanding with the following State agencies: Fish and Game Commission, Division of Water Resources, Department of Health and Environment, State Geological Survey, State Historical Society, State Water Office, State Conservation Commission and State Fire Marshal.

[48 FR 8446, Mar. 1, 1983, as amended at 49 FR 23836, June 8, 1984; 50 FR 14213, Apr. 11, 1985; 50 FR 47218, Nov. 15, 1985]

§ 916.16 Required program amendments [Reserved].

§ 916.20 Approval of Kansas abandoned mine land reclamation plan.

The Kansas AML Plan, as submitted on October 1, 1981, and amended by Kansas Statute 49-428, April 14, 1982, is hereby fully approved and all conditions prohibiting the funding of State AML construction grants are deleted. Copies of the approved Plan, including amendments, are available at:

Office of Surface Mining, Missouri State Office, 818 Grand Avenue, Kansas City, Missouri 64106
State Corporation Commission, Mined-Land Conservation Board, 107 West 11th Street, Pittsburg, Kansas 66762.

(Pub. L. 95-87, 30 U.S.C. 1201 *et seq.*)

[48 FR 24876, June 3, 1983]

PART 917—KENTUCKY

Sec.

917.1 Scope.
917.10 State regulatory program approval.
917.11 Conditions of State regulatory program approval.
917.13 State statutory and regulatory provisions set aside.
917.15 Approval of amendments to State regulatory program.
917.16 Required program amendments.
917.17 State program provisions disapproved.
917.20 Approval of the Kentucky abandoned mine reclamation plan.
917.21 Amendments to approved Kentucky abandoned mine land reclamation program.

AUTHORITY: Pub. L. 95-87, Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*)

§ 917.1 Scope.

This part contains all rules applicable only within Kentucky that have been adopted under the Surface Mining Control and Reclamation Act of 1977.

[47 FR 21434, May 18, 1982]

§ 917.10 State regulatory program approval.

The Kentucky State program as resubmitted on December 30, 1981, and amended and clarified on February 22, 1982, was conditionally approved, effective May 18, 1982. Beginning on that date, the Kentucky Department for Natural Resources and Environmental Protection was deemed the regulatory authority in Kentucky for surface coal mining and reclamation operations and for coal exploration operations on non-Federal and non-Indian lands. Copies of the approved program are available for review at:

(a) Kentucky Field Office, Office of Surface Mining, 340 Legion Drive, Suite 28, Lexington, Kentucky 40504.

(b) Office of Surface Mining, Administrative Record Room, 1100 L Street, N.W., Washington, D.C. 20240.

(c) Department for Surface Mining, Reclamation and Enforcement, Commonwealth of Kentucky, 3rd Floor, Capitol Plaza Tower, Frankfort, Kentucky 40504.

[48 FR 251, Jan. 4, 1983]

§ 917.11 Conditions of State regulatory program approval.

The approval of the Kentucky State program is subject to the state revising its program to correct the deficiencies listed in this section. The program revisions may be made, as appropriate, to the statute, to the regulations, to the program narrative, or by means of a legal opinion. This section indicates, for the general guidance of the State, the component of the program to which the Secretary recommends the change be made.

(a)—(p) [Reserved]

[47 FR 21434, May 18, 1982, as amended at 49 FR 33247, Aug. 22, 1984; 49 FR 37587, Sept. 25, 1984; 50 FR 8610, Mar. 4 1985; 50 FR 23003, May 30, 1985]

§ 917.13 State statutory and regulatory provisions set aside.

(a) The following provision of Kentucky Revised Statute at KRS 350.060(22) is inconsistent with section 701(28) of the Surface Mining Control and Reclamation Act of 1977 and is hereby set aside effective December 1, 1985:

> "(22) All operations involving the crushing, screening, or loading of coal which do not separate the coal from its impurities, and which are not located at or near the mine site, shall be exempt from the requirements of this chapter."

(b) [Reserved]

[50 FR 47728, Nov. 20, 1985]

§ 917.15 Approval of Amendments to State Regulatory Program.

(a) The following amendments are approved effective on January 4, 1983. Revisions submitted on May 28, 1982, to the following Kentucky regulations: 405 KAR 7:020 section 1(11), 7:020 section 1(70), 7:020 section 1(117), 7:030 section 1, 7:040 section 5(1), 7:040 section 10(2), 7:040 section 10(7), 7:090 section 4(1), 7:090 section 4(6), 7:090 section 6, 7:095, 8:010 section 6(1), 8:010 section 6(2), 8:010 section 13(1), 8:010 section 20(5), 8:010 section 21(2)(a)(4), 8:010 section 21(2)(b)(1), 8:010 section 22(1), 8:010 section 22(2)(a), 8:010 section 22(a)(2), 8:010 section 22(2)(c)(1), 8:010 section 22(4), 8:010 section 22(5), 8:010 section 22(6), 8:020 section 2(2)(h), 8:030 section 23(4), 12:010 section 3(5) (a) and (b), 16:140 section 2(1)(d), 18:140 section 2(1)(d), 24:020 section 3(7), 24:020 section 4(6), 24:020 section 3(5), 24:030 section 4(4), 24:030 section 8(7), 24:030 section 9, 1:005 section 6, and 3:005 section 6.

(b) Revisions submitted on May 28, 1982, to the following Kentucky statutory provisions: KRS Chapter 350, as contained in House Bill No. 19; KRS 350.010, as contained in Senate Bill No. 267; KRS 350.425 and 151.250(3), as contained in Senate Bill No. 380; KRS 350.035, 350.990 (2) and (5), and KRS Chapter 350, as contained in Senate Bill No. 165; KRS 350.010 section 1 (1), (2), (4), (7), (8) and (17), KRS 350.028 section 3 (3), (4) and (5), KRS 350.060 section 5 (3), (5)(g), (8)(a), (8)(d)-(i), (10), (14), (15), and (16), KRS 350.450 section 33(4), KRS 350.130 section 14, KRS 350.610(6), and KRS 350.990 section 35(1), contained in Senate Bill No. 218; KRS 350.060(9), KRS 350.060 section 5(14) and KRS Chapter 377 section 1(14), contained in House Bill No. 813; KRS 350.139 and KRS Chapter 377 section 4(2), contained in Senate Bill No. 316.

(c) The following amendments are approved effective on May 13, 1983. Revisions submitted on May 28, 1982, to KRS 350.062(9) and KRS 350.093 Section 2, contained in Senate Bill No. 218; Revisions submitted on May 28, 1982, to 405 KAR 16:020 Section 4.

(d) The following amendments are approved effective on May 20, 1983: Revisions submitted on January 11, 1983, to 405 KAR 7:020 Section 1 (13), (27), (34), and (57), 12:010 Section 6, 16:060 Section 9(2), 18:060 Section 7(3), 16:060 Section 11(1), 18:060 Section 9(1), 16:060 Section 1(3), 18:060 Section 9(3), Section 16:090 Section 2, 18:090 Section 2, 16:090 Section 5(5), 18:090 Section 5(5), 16:110 Section 2(2), 18:110 2(2), 16:130 Section 2(2), 18:130 Section 2(2), 16:220 Section 4, 18:230 Section 4, and 24:030 Section 3.

(e) The following amendment is approved effective on October 12, 1983: Technical Reclamation Memorandum #9, dated February 1, 1983.

(f) The following amendment is approved effective on November 25, 1983: Revisions submitted on October 31, 1983, to 405 KAR 7:020E and 7:030E.

(g) The following amendments are approved effective on April 13, 1984: Revisions submitted on January 10, 1984, to "Kentucky's Plan for Transition to Primacy" as modified and clarified by Meeting Minutes of January 9, 1984, signed by the Secretary of the Kentucky Natural Resources and Environmental Cabinet and OSM Lexington Field Office Director on January 13, 1984.

(h) The following amendments are approved effective on August 22, 1984: Revisions to the Kentucky Revised Statutes (KRS) Chapter 350 as specified in Kentucky House Bill number 514 as follows: KRS 350.010; KRS 350.250 (1), (3), (4); KRS 350.032; KRS 350.093 (2); KRS 355.060(5)(g).

(i) The following amendments are approved effective on September 25, 1984: Revisions submitted on October 31, 1983, to 405 KAR 7:020 and 7:030; 1:030, 1:040 and 1:050; 16:090 and 18:090; 8:030 and 8:040; 7:090; 16:060; and 16:140 and 18:140 accompanied by material submitted by Kentucky on May 14, 1984, pertaining to 405 KAR 1:030, 1:040, 1:050, and 7:090.

(j) The following amendments are approved effective October 3, 1984: 405 KAR 8:050 Section 2 and the legal opinion dated October 26, 1983, received by OSM on October 31, 1983; 405 KAR 16:190; 18:190, as submitted by Kentucky on October 31, 1983.

(k) The following amendment submitted to OSM on October 12 1984, is approved effective March 4, 1985 revisions to the Kentucky Administration Regulations (KAR) altering the definition of "principal shareholder" at 405 KAR 7:020 section 1(87); adding language to the definition of "surface coal mining operations" at 405 KAR 7:020 section 1(118) to provide that these activities shall not include coal exploration and incidental extraction operations; and adding the exemption for incidental extraction operations at 405 KAR 7:030 section 3(1)(e).

(l) The following amendments submitted to OSM on August 3, 1984, are approved effective May 30, 1985: revisions to the Kentucky Revised Statute (KRS) adding a new section of KRS Chapter 350 and amending KRS 350.990 as specified in Senate Bill 298; revisions to KRS 350.060 as specified in State Bill 300; revisions to the Kentucky Administrative Regulations (KAR) at 405 16:020 intended to implement House Bill 514, as modified on October 12, 1984; revisions to KRS 350.032 and 350.990 as specified in House Bill 868; and, revisions to KRS 350.135 as specified in House bill 888.

(m) The following amendments submitted to OSM on August 29, 1985, are approved effective November 20, 1985 provided that they are adopted in the form submitted to OSM: revisions to paragraph D of "Field Enforcement Procedures" in section II of the State program plan; revisions to the Kentucky Administrative Regulations in 405 KAR 7:090 section 11(2)(a) and 405 KAR 7:090 section 12(3); editorial revisions in 405 KAR 7:090; and revisions to 405 KAR 24:030 to amend the definition of "substantial legal and financial commitments."

(n) The following amendments submitted to OSM on December 4, 1984, and modified on May 22, 1985 are approved effective December 10, 1985: Kentucky's blaster certification program, as contained in the Kentucky regulations at 405 KAR 7:070 and in the Kentucky blaster training program and examination; and revisions to the Kentucky regulations governing use of explosives at 405 KAR 16:120 and 18:120.

(o) The following amendments submitted to OSMRE on June 6, 1984 and December 17, 1985, are approved effective January 24, 1986: Revisions to the Kentucky Administrative Regulations adding 405 KAR 1:015, 405 KAR 3:015 and 405 KAR 7:015 except the incorporation by reference of RAM #33 "Coal Processing Operations and Crushing and Loading Facilities," dated April 27, 1982 in 405 KAR 7:015.

(p) The following amendments submitted to OSMRE on August 13, 1985, are approved effective March 3, 1986: Revisions to the Kentucky Administrative Regulations in 405 KAR 7:020, 405 KAR 7:080, 405 KAR 8:030, 405 KAR 8:040, 405 KAR 12:010, 405 KAR 12:020, 405 KAR 16:050, 405 KAR 16:110, 405 KAR 16:130, 405 KAR 16:170, 405 KAR 18:050, 405 KAR 18:110, 405 KAR 18:130, 405 KAR 18:170 and 405 KAR 20:030.

(q) The following amendments submitted to OSMRE on September 16, 1985, including modifications submitted December 10, 1985, are approved effective March 17, 1986: revisions to the Kentucky Administrative Regulations in 405 KAR 7:015 and 405 KAR 10:030.

(r) The following amendment submitted to OSMRE on December 10, 1985, is approved effective April 4, 1986: revisions to the Kentucky Administrative Regulations in 405 KAR 7:090, section 11(2)(a).

(s) The following amendments submitted to OSMRE on December 3, 1985, as emergency regulations are approved effective April 9, 1986; revisions to the Kentucky Administrative Regulations in 405 KAR 7:020E, 405 KAR 8:050E, and 405 KAR 20:070E.

(t) The following amendments concerning surety bond cancellation on permits in noncompliance with contemporaneous reclamation requirements, as submitted on August 3, 1984 and revised on October 12, 1984, are approved, effective May 27, 1986. Revisions to the Kentucky Revised Statutes at 350.066 through 350.070 as contained in Senate Bill 285, and the addition of a new subchapter to the Kentucky Administrative Regulations at 405 KAR 10:035.

[48 FR 252, Jan. 4, 1983]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 917.15, see the List of CFR Sections Affected in the Finding Aids section of this volume.

§ 917.16 Required program amendments.

(a) [Reserved]

(b) Pursuant to 30 CFR 732.17, Kentucky is required to accomplish the following actions or termination of the program approval found in § 917.10 will be initiated on August 31, 1985.

(1) Action to recruit personnel to meet the approved program staffing levels of 408 must begin upon publication of this notice. No later than May 1, 1985, notices concerning vacant positions must be advertised.

(2) Kentucky must have employed sufficient personnel to reach the approved permanent program level (408) no later than August 31, 1985. Of the approved permanent program level of 408, a minimum of 156 must be inspection and enforcement personnel.

(3) By the fifth of each month, beginning on February 5, 1985, Kentucky will provide a report to OSM describing the actions taken to acohieve the approved program staffing levels by August 31, 1985, and of any additional vacancies which may have occurred during the previous month.

[49 FR 50721, Dec. 31, 1984 and 50 FR 23687, June 5, 1985, as amended at 50 FR 50296, Dec. 10, 1985]

§ 917.17 State program provisions disapproved.

(a) The amendment to revise approved staffing and budget levels under the Kentucky permanent regulatory program which was submitted by Kentucky on June 29, 1984 is hereby disapproved effective December 31, 1984.

(b) The amendment at Kentucky Revised Statute 350.060(22) submitted by Kentucky on May 26, 1982, and the legal opinion (insofar as it relates to this amendment) and Reclamation Advisory Memorandum No. 33 submitted by Kentucky on October 28, 1983, are hereby disapproved effective September 17, 1985.

[49 FR 50720, Dec. 31, 1984, as amended at 50 FR 37659, Sept. 17, 1985]

§ 917.20 Approval of the Kentucky abandoned mine reclamation plan.

The Kentucky Abandoned Mine Reclamation Plan as submitted on June 4, 1981, is approved. Copies of the approved program are available at the following locations:

Office of Surface Mining Reclamation and Enforcement, Region II, 503 Gay Street, Suite 500, Knoxville, Tennessee 37902

Kentucky Department of Natural Resources and Environmental Protection, Frankfort, Kentucky 40601

Administrative Record, Office of Surface Mining Reclamation and Enforcement, Room 5315, 1100 "L" Street NW., Washington, D.C. 20240

[47 FR 21439, May 18, 1982]

§ 917.21 Amendment to approved Kentucky abandoned mine land reclamation plan.

The Kentucky Amendment, as submitted on December 8, 1982, is approved. Copies of the approved amendment are available at:

Kentucky Department of Natural Resources and Environmental Protection, Frankfort, Ky. 40601

Office of Surface Mining, Lexington Field Office, 340 Legion Drive, Suite 28, Lexington, Ky. 40504

Office of Surface Mining Reclamation and Enforcement, Administrative Record, Rm. 5315, 1100 L Street NW., Washington, D.C. 20240.

[48 FR 38464, Aug. 24, 1983]

PART 918—LOUISIANA

Sec.
918.1 Scope
918.10 State regulatory program approval.
918.16 Required program amendments.

§ 918.1 Scope.

This part contains all rules applicable only within Louisiana which have been adopted under the Surface Mining Control and Reclamation Act of 1977.

(Secs. 102, 201, and 503, Pub. L. 95-87 (30 U.S.C. 1202, 1211, and 1253))

[45 FR 67343, Oct. 10, 1980]

§ 918.10 State regulatory program approval.

(a) The Louisiana permanent regulatory program, as submitted on January 3, 1980, and resubmitted on September 4, 1980, is approved effective October 10, 1980. Copies of the approved program are available at:

(1) Louisiana Office of Conservation, Department of Natural Resources, 625 N. 4th Street, Baton Rouge, Louisiana 70804, Telephone: (504) 342-5510

(2) Louisiana Office of Conservation, Monroe District, Room 214, 122 St. John St., Monroe, Louisiana 71201, Telephone: (318) 362-3111

(3) Louisiana Office of Conservation, Shreveport District, 960 Jorden St., Shreveport, Louisiana 71103, Telephone: (318) 226-7585

(4) Office of Surface Mining Reclamation and Enforcement, Region IV, 5th Floor, Scarritt Bldg., 818 Grand Ave., Kansas City, Missouri 64106, Telephone: (816) 374-3920

(5) Office of Surface Mining Reclamation and Enforcement, Room 135, Interior South Building, 1951 Constitution Avenue, Washington, D.C. 20240, Telephone: (202) 343-4728

(b) In its May 16, 1980 opinion, the U.S. District Court for the District of Columbia ordered the Secretary to affirmatively disapprove any regulation in a State program which incorporates a suspended or remanded Federal regulation. A list follows of provisions contained in the Louisiana submission which are based on suspended or remanded Federal regulations. These regulations are affirmatively disapproved to the extent indicated or, if no limitation is indicated, in their entirety.

(1) Section 100.5(146), the definition of "valid existing rights," to the extent it does not allow recognition of such rights an operator may claim by having made a good faith effort to

obtain all permits before 8/31/77 as stipulated by the court's decision.

(2) Section 100.5(60), the definition of "mine plan area," and the use of the term in Parts 179 and 180 to the extent of the court's decision regarding requirements of information outside the permit area.

(3) Sections 179.20 and 180.16 requiring a permit application to contain a study of fish and wildlife and to include a fish and wildlife reclamation plan.

(4) Section 179.21 to the extent it requires a soil survey for lands other than those which a reconnaissance inspection suggests may be prime farmland.

(5) Section 208.14(b) to the extent it allows the regulatory authority to forfeit and keep the entire amount of a bond where the entire amount is not needed to complete the reclamation.

(6) Section 216.115 to the extent it requires an operator who proposes range or pasture as the post-mining land use to actually use the land for grazing for the last two years of bond liability.

(7) Sections 223.11(c), 223.15(b), and 223.15(c) to the extent they require an operator on prime farmland to actually return the land to crop production.

(8) Section 216.116(b) to the extent that it states that an operator's responsibility for successful revegetation is not commenced until the vegetation reaches 90 percent of the natural cover in the area.

(9) Section 216.133(c) to the extent it requires an operator to provide "letters of commitment" for proposed land use changes or for proposed cropland use.

(10) Sections 185.17(a)(3) and 223.14(c), concerning excessive soil compaction.

(11) Sections 216.42 (a)(1) and (a)(7) to the extent they apply effluent standards to the reclamation phase of a surface coal mining operation.

(12) Section 216.42(b), relating to effluent standard exemptions during major storm periods.

(13) Section 216.46(b), concerning sediment storage volume in sediment ponds.

(14) Section 216.46(c) concerning detention time for water in sediment ponds.

(15) Section 216.46(d) to the extent it requires dewatering devices to have a discharge rate to achieve and maintain the theoretical detention time for sediment ponds.

(16) Section 216.46(h), concerning sediment removal from sediment ponds.

(17) Section 216.65(f) requiring special approval prior to blasting within 1,000 feet of certain buildings and 500 feet of other facilities and which restricts blasting at distances greater than 300 feet.

(18) Section 216.83, concerning coal processing waste banks, to the extent it precludes a possible exemption from the underdrain requirement where the operator can demonstrate that an alternative would ensure structural integrity of the waste bank and protection of water quality.

(19) Section 216.95, concerning air resources protection, to the extent it applies to air pollution not caused by erosion.

(20) Sections 216.150—176, concerning performance standards for three classes of roads.

(21) Section 101.5(93), the definition of "roads" that is used in sections 216.150—176.

(22) Section 185.17(a)(8) to the extent that it requires prime farmland reclamation target yields to be based on estimated yields under a high level of management rather than a level of management equivalent to that used on prime farmlands in the surrrounding area.

(23) Section 101.11(c)(1) (i) and (ii) relating to exemptions for existing structures, to the extent that the exemptions are not mandatory after the appropriate findings are made.

(24) Sections 176.5(b)(3) and 176.11(a)(3) concerning the requirements for maps of the proposed exploration area.

(25) Sections 176.5(b)(5) and 176.11(a)(5), concerning the requirement that operators explain their basis for entering the development area when the surface is owned by a person other than the operator.

(26) Section 216.133(b)(1) to the extent it does not allow restoration of lands to the conditions they were capable of supporting prior to any mining.

(27) Section 206.12(e)(6)(iii) to the extent it requires cessation of operations upon the insolvency of a surety.

(28) Section 216.103(a)(1) to the extent it does not provide operators the option of treating acid-forming and toxic-forming material in lieu of covering such materials.

(29) Sections 245.13 and 245.14 to the extent they impose a civil penalty point system.

(30) Section 100.11(b), concerning the two-acre exemption, insofar as it applies to any operation by the person who affects or intends to affect more than two acres at physically unrelated sites within one year when the area affected at each site does not exceed two acres.

(31) Section 100.5(85), the definition of "public road."

(Secs. 102, 201, and 503, Pub. L. 95-87 (30 U.S.C. 1202, 1211, and 1253))

[45 FR 67343, Oct. 10, 1980]

§ 918.16 Required program amendments.

Pursuant to 30 CFR 732.17, Louisiana is required to submit for OSM'S approval the following proposed program amendments by the dates specified.

(a) By May 31, 1986, Louisiana shall submit for OSM's approval

(1) Rules governing the training, examination and certification of blasters, and

(2) A program to examine and certify all persons who are directly responsible for the use of explosives in surface coal mining operation.

(b) [Reserved]

(Pub. L. 95-87, Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*))

[50 FR 19931, May 13, 1985]

PART 920—MARYLAND

Sec.
920.1 Scope.
920.10 State program approval.
920.12 State program provisions disapproved.
920.15 Approval of amendments to State regulatory program.
920.16 Required program amendments.
920.20 Approval of Maryland abandoned mine plan.

AUTHORITY: Pub. L. 95-87, Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*).

§ 920.1 Scope.

This part contains all rules applicable only within Maryland that have been adopted under the Surface Mining Control and Reclamation Act of 1977.

[45 FR 79449, Dec. 1, 1980]

§ 920.10 State program approval.

The Maryland State program submitted on March 3, 1980, as amended and clarified on June 16, 1980, and as further amended on April 9, 1980, June 3, 1981, and October 23, 1981, is approved effective February 18, 1982. Copies of the approved program, as amended are available for review at:

(a) Maryland Department of Natural Resources, Energy Administration, Bureau of Mines, 69 Hill Street, Frostburg, Maryland 21532, Telephone: (301) 689-4138.

(b) Office of Surface Mining, Charleston Field Office, 603 Morris Street, Charleston, West Virginia 25301, Telephone: (304) 347-7158.

(c) Office of Surface Mining, Administrative Record, Room 5124, 1100 "L" Street, N.W., Washington, D.C. 20240, Telephone: (202) 343-4855.

[50 FR 47385, Nov. 18, 1985]

§ 920.12 State program provisions disapproved.

The following provision of the Maryland permanent regulatory program submission is hereby disapproved: COMAR 08.13.09.41D, which proposes that in lieu of a civil penalty assessment, the regulatory authority may order a suspension of strip mining operations for an appropriate period of time such that the economic impact on the operator is equivalent to the amount of the civil penalty which would have been assessed for the violation.

[45 FR 79449, Dec. 1, 1980]

§ 920.15 Approval of amendments to State regulatory program.

(a) The following amendments were approved effective February 8, 1984. Maryland revised regulations and policy statements submitted October 28, 1982, as amended on October 21, and November 23, 1983.

(b) The following amendment submitted to OSM on May 28, 1984, as modified on October 5, 1984, is approved effective January 22, 1985. Maryland's blaster certification program and revisions to the State regulations governing the use of explosives, as contained in the proposed Code of Maryland Administrative Regulations, Title 08. Subtitle 13 Chapter 09 Sections 02 and 25 submitted to OSM on October 5, 1984, and all other items as submitted by Maryland on May 28, 1984, and modified on October 5, 1984. This approval is contingent on promulgation of the above referenced proposed regulations in the identical form reviewed by OSM and the public.

(c) The following amendment submitted to OSM on January 30, 1985, as revised July 10, 1985, is approved effective September 10, 1985. Revisions to Maryland regulations governing the use of explosives, as contained in the proposed Code of Maryland Administrative Regulations, Title 08, Subtitle 13, Chapter 09 Sections 02 and 25 submitted to OSM on January 30, 1985, and revised July 10, 1985. This approval is contingent on promulgation of the above referenced proposed regulations in a form identical to that submitted to the Director.

(d) The following statutory and regulatory amendments submitted to OSM on January 13, 1984, June 8, 1984, August 7, 1984, October 10, 1984, and November 9, 1984, are approved effective November 18, 1985, subject to the requirements set forth in § 920.16: Maryland's permitting requirements and performance standards for coal exploration activities of COMAR 08.13.09.07 as submitted on January 13, 1984; statutory revision to § 7-506(h), and § 7-514.6 of Title 7 of the Annotated Code of Maryland regarding the advertisement of bond release and prospecting, respectively, as submitted on January 13, 1984; Maryland's statutory and regulatory revisions concerning the form, amount and release procedures for performance bonds at proposed COMAR 08.13.09.15H(2), proposed COMAR 08.13.09.15I(1) (b) and (c), proposed COMAR 08.13.09.15I(2)(a), proposed COMAR 08.13.09.15J (4), (5) and (6)(a), § 7-511 (a) and (b) of the Annotated Code of Maryland, COMAR 08.13.09.15C(3), COMAR 08.13.09.15F(3), COMAR 08.13.09.15H(5), COMAR 08.13.09.15B(2)(c), and § 7-506(c)(3) of the Maryland Annotated Code as submitted on June 8, 1984; regulatory revisions to COMAR 08.13.09 as submitted on August 7, 1984, providing for the regulation of surface coal mining and reclamation operations on State-owned land; statutory revisions to § 7-504 (a) and (c) and § 7-505,1(e) of the Annotated Code of Maryland concerning license suspension and protection of areas designated for mining as submitted on October 10, 1984; statutory and regulatory revision concerning the circumstances under which extensions to the 90-day abatement period can be authorized at § 7-507(c)(2) of the Annotated Code of Maryland and COMAR 08.13.09.40F (4), (5), (6), and (7) as submitted on January 13, 1984; and regulatory revisions at proposed COMAR 08.13.09.40B as submitted on November 9, 1984, and clarified on January 16, 1985, concerning the State's inspection frequency standards. This approval is contingent upon the promulgation of the aforementioned proposed regulations.

[49 FR 4734, Feb. 8, 1984, as amended at 50 FR 2785, Jan. 22, 1985; 50 FR 36971, Sept. 10, 1985; 50 FR 47386, Nov. 18, 1985]

§ 920.16 Required program amendments.

Pursuant to 30 CFR 732.17, Maryland is required to submit for OSM's approval the following proposed program amendments by the dates specified.

(a) By January 17, 1986, amend its program at COMAR 08.13.09.07 to require that coal exploration activities on lands designated unsuitable be approved by the regulatory authority as provided by 30 CFR 772.12.

(b) By January 17, 1986, amend its program at COMAR 08.13.09.07G(5)(a) to prohibit the disturbance of habitats of unusually high value and critical habitats of endangered or threatened species during coal exploration activities as required by 30 CFR 815.15(a).

(c) By January 17, 1986, amend its program at COMAR 08.13.09.07G(5)(k) to require the use of sediment control structures during coal exploration activities as provided by 30 CFR 815.15(i).

(d) By July 30, 1986, amend is program at § 7-507(c)(1) of Title 7 of the Annotated Code of Maryland to provide authority for right of entry as provided by § 517 of SMCRA and 30 CFR 840.12.

[50 FR 47386, Nov. 18, 1985]

§ 920.20 Approval of Maryland abandoned mine plan.

The Maryland Abandoned Mine Plan, as submitted on March 8, 1982, is approved.

Copies of the approved program are available at:

Office of Surface Mining Reclamation and Enforcement, 603 Morris Street, Charleston, West Virginia 25301

State of Maryland Bureau of Mines, 69 Hills Street, Frostburg, Maryland 21532

The Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 5315, 1100 L Street, NW., Washington, D.C. 20240

[47 FR 25957, June 16, 1982]

PART 921—MASSACHUSETTS

Sec.

921.700 Massachusetts Federal program.
921.701 General.
921.707 Exemption for coal extraction incident to Government-financed highway or other construction.
921.761 Areas designated unsuitable for surface coal mining by Act of Congress.
921.762 Criteria for designating areas as unsuitable for surface coal mining operations.
921.764 Process for designating areas unsuitable for surface coal mining operations.
921.770 General requirements for permits and exploration procedures.
921.771 General requirements for permits and permit applications.
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Sec.
921.778 Surface mining permit applications—minimum requirements for legal, financial, compliance, and related information.
921.779 Surface mining permit applications—minimum requirements for information on environmental resources.
921.780 Surface mining permit applications—minimum requirements for reclamation and operation plan.
921.782 Underground mining permit applications—minimum requirements for legal, financial, compliance, and related information.
921.783 Underground mining permit applications—minimum requirements for information on environmental resources.
921.784 Underground mining permit applications—minimum requirements for reclamation and operation plan.
921.785 Requirements for permits for special categories of mining.
921.786 Reviews, public participation, and approval or disapproval of permit applications and permit terms and conditions.
921.787 Administrative and judicial review of decisions on permit applications.
921.788 Permit reviews, revisions, and renewals, and transfer, sale, and assignment of rights granted under permits.
921.795 Small operator assistance.
921.800 General requirements for bonding of surface coal mining and reclamation operations.
921.815 Performance standards—coal exploration.
921.816 Performance standards—surface mining activities.
921.817 Performance standards—underground mining activities.
921.819 Special performance standards—auger mining.
921.823 Special performance standards—operations on prime farmland.
921.824 Special performance standards—mountaintop removal.
921.826 Special performance standards—operations on steep slopes.
921.827 Special performance standards—coal processing plants and support facilities not located at or near the minesite or not within the permit area for a mine.
921.828 Special performance standards—in situ processing.
921.842 Federal inspections.
921.843 Federal enforcement.
921.845 Civil penalties.
921.955 Certification of blasters.

AUTHORITY: Pub. L. 95-87, The Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201 *et seq.*, 91 Stat. 445.

SOURCE: 48 FR 41004, Sept. 12, 1983, unless otherwise noted.

§ 921.700 Massachusetts Federal program.

(a) This part contains all rules that are applicable to surface coal mining operations in Massachusetts which have been adopted under the Surface Mining Control and Reclamation Act of 1977.

(b) The rules in this part cross-reference pertinent parts of the permanent program regulations in this chapter. The full text of a rule is in the permanent program rule cited under the relevant section of the Massachusetts Federal program.

(c) The rules in this part apply to all surface coal mining operations in Massachusetts conducted on non-Federal and non-Indian lands. The rules in Subchapter D of this chapter apply to operations on Federal lands in Massachusetts.

(d) The information collection requirements contained in §§ 921.764, 921.770, 921.771, 921.795, and 921.800 do not require approval by the Office of Management and Budget under 44 U.S.C. 3507 because there are fewer than 10 respondents annually.

(e) There are no Massachusetts laws which provide more stringent environmental control and regulation of surface coal mining operations than do the provisions of the Surface Mining and Reclamation Act and the regulations in 30 CFR Chapter VII.

(f) The following are Massachusetts laws that interfere with the achievement of the purposes and requirements of the Act and are, in accordance with Section 504(g) of the Act, preempted and superseded insofar as they apply to surface coal mining operations regulated under the Act:

(1) The Coal Mining Regulatory and Reclamation Act of 1977, as amended, Mass. Ann. Laws. Ch. 21B, Sections 1-15.

(2) Statutes governing licenses for minerals exploration, Mass. Ann. Laws Ch. 21, Section 54-56.

(g) The Secretary may grant a limited variance from the performance standards of §§ 921.815 through 921.828 of this part if the applicant for coal exploration approval or a surface mining permit submitted pursuant to §§ 921.770 through 921.788 of this part can demonstrate in the application that:

(1) A variance is necessary because of the nature of Massachusetts' terrain, climate, biological, chemical or other relevant physical conditions; and

(2) The proposed variance is no less effective than the environmental protection requirements of the regulations in this program and is consistent with the Act.

§ 921.701 General.

Sections 700.5, 700.11, 700.12, 700.13, 700.14, 700.15, and Part 701 of this chapter shall apply to surface coal mining and reclamation operations in Massachusetts.

§ 921.707 Exemption for coal extraction incident to Government-financed highway or other construction.

Part 707 of this chapter, *Exemption for Coal Extraction Incident to Government-Financed Highway or Other Construction*, shall apply to surface coal mining and reclamation operations.

§ 921.761 Areas designated unsuitable for surface coal mining by Act of Congress.

Part 761 of this chapter, *Areas Designated by Act of Congress*, shall apply to surface coal mining and reclamation operations.

§ 921.762 Criteria for designating areas as unsuitable for surface coal mining operations.

Part 762 of this chapter, *Criteria for Designating Areas Unsuitable for Surface Coal Mining Operations*, shall apply to surface coal mine operations.

§ 921.764 Process for designating areas unsuitable for surface coal mining operations.

Part 764 of this chapter, *State Processes for Designating Areas Unsuitable for Surface Coal Mining Operations*, pertaining to petitioning, initial processing, hearing requirements, decisions, data base and inventory systems, public information, and regulatory responsibilities, are applicable in Massachusetts beginning on May 28 1983.

§ 921.770 General requirements for permits and exploration procedures.

(a) Part 770 of this chapter, *General Requirements for Permit Systems Under State Programs*, shall apply to surface coal mining and exploration operations.

(b) No person shall conduct coal exploration which results in the removal of more than 250 tons of coal nor shall any person conduct surface coal mining operations without a permit issued by the Secretary pursuant to 30 CFR Part 770 and applicable permits issued pursuant the laws of the State of Massachusetts, including: the Historic and Scenic Rivers Act, Mass. Ann. Laws Ch. 21, Sections 8-17B; Massachusetts Register of Historic Places, Mass. Ann. Laws Ch. 152 and the regulations (950 CMR 71); historical preservation statutes, Mass. Ann. Laws Ch. 9, Sections 26-27(D); real property statutes, Mass. Ann. Laws Ch. 184, Sections 31-32; statutes governing State forests and parks, Mass. Ann. Laws Ch. 132, Sections 40-46; the Wetlands Protection Act Ch. 131, Sections 40-46; statutes and rules governing dredging permits, Mass. Ann. Laws Ch. 21A; Section 14, 310 CMR 9.01 *et seq.*; the Massachusetts Hazardous Waste Management Act Ch. 21C, Sections 1-14; the Massachusetts Clean Water Act Ch. 21, Sections 26-53; statutes governing the construction of roads, drains, or ditches, Mass. Ann Laws Ch. 252 Sections 15-18; statutes governing drilling or removal of sand or any minerals, Mass. Ann. Laws Ch. 132A, Sections 13-18; and statutes governing use, storage, and handling of explosives, Mass. Ann. Laws Ch. 148, Sections 9-19.

(c) The Secretary shall coordinate reveiw and issuance of a coal exploration or surface coal mining and reclamation permit with the review and issuance of other Federal and State permits listed in this Subpart and Part 770 of this chapter.

§ 921.771 General requirements for permits and permit applications.

(a) Part 771 of this chapter, *General Requirements for Permits and Permit Applications*, shall apply to any person who makes application for a permit to conduct surface coal mine operations.

(b) A person who wishes to conduct new surface coal mining and reclamation operations or who wishes a revision of his permit shall file a complete application at least 12 months prior to the date upon which permit issuance or revision is desired, and shall pay to the Secretary a permit fee in accordance with § 736.25 of this chapter.

§ 921.776 General requirements for coal exploration.

(a) Part 776 of this chapter, *General Requirements for Coal Exploration*, shall apply to any person who conducts or seeks to conduct coal exploration operations.

(b) The Office shall make every effort to act on an exploration application within 60 days of receipt or such longer time as may be reasonable under the circumstances. If additional time is needed, OSM shall notify the applicant that the application is being reviewed, but that more time is necessary to complete such review, setting forth the reasons and the additional time that is needed.

§ 921.778 Surface mining permit applications—minimum requirements for legal, financial, compliance, and related information.

Part 778 of this chapter, *Surface Mining Permit Applications—Minimum Requirements for Legal, Financial, Compliance, and Related Information*, shall apply to any person who makes application for a permit to conduct surface coal mining and reclamation operations.

§ 921.779 Surface mining permit applications—minimum requirements for information on environmental resources.

Part 779 of this chapter, *Surface Mining Permit Applications—Minimum Requirements for Information on Environmental Resources*, shall apply to any person who makes application to conduct surface coal mining and reclamation operations.

§ 921.780 Surface mining permit applications—minimum requirements for reclamation and operation plan.

Part 780 of this chapter, *Surface Mining Permit Applications—Minimum Requirements for Reclamation and Operation Plan,* shall apply to any person who makes application to conduct surface coal mining and reclamation operations.

§ 921.782 Underground mining permit applications—minimum requirements for legal, financial, compliance, and related information.

Part 782 of this chapter, *Underground Mining Permit Applications—Minimum Requirements for Legal, Financial, Compliance, and Related Information,* shall apply to any person who makes application for a permit to conduct underground coal mining and reclamation operations.

§ 921.783 Underground mining permit applications—minimum requirements for information on environmental resources.

Part 783 of this chapter, *Underground Mining Permit Applications—Minimum Requirements for Information on Environmental Resources,* shall apply to any person who submits an application to conduct underground coal mining and reclamation operations.

§ 921.784 Underground mining permit applications—minimum requirements for reclamation and operation plan.

Part 784 of this chapter, *Underground Mining Permit Applications—Minimum Requirements for Reclamation and Operation Plan,* shall apply to any person who makes application to conduct underground coal mining operations.

§ 921.785 Requirements for permits for special categories of mining.

Part 785 of this chapter, *Requirements for Permits for Special Categories of Mining,* shall apply to each person who makes application for a permit to conduct certain categories of surface coal mining and reclamation operations as specified therein.

§ 921.786 Review, public participation, and approival or disapproval of permit applications and permit terms and conditions.

Part 786 of this chapter, *Review, Public Participation, and Approval or Disapproval of Permit Applications and Permit Terms and Conditions,* shall apply to the review of applications made by any person for surface coal mining and reclamation operations.

§ 921.787 Administrative and judicial review of decisions on permit applications.

Decisions on permit applications shall be subject to administrative and judicial review in accordance with Part 787 of this chapter and Sections 520, 525, and 526 of the Act.

§ 921.788 Permit reveiews, revisions, and renewals, and transfer, sale, and assignment of rights granted under permits.

Part 788 of this chapter, *Permit Reviews, Revisions, and Renewals, and Transfer, Sale, and Assignment of Rights Granted Under Permits,* shall apply to review, revision, and renewal of permits for surface coal mine operations, and to transfer, sale, and assignment of rights granted under permits.

§ 921.795 Small operator assistance.

Part 795 of this chapter, *Small Operator Assistance,* shall apply to any person making application for assistance under the small operator assistance program.

§ 921.800 General requirements for bonding of surface coal mining and reclamation operations.

Part 800 of this chapter, *General Requirements for Bonding of Surface Coal Mining and Reclamation Operations Under Regulatory Programs,* shall apply to all surface coal mining and reclamation operations.

§ 921.815 Performance standards—coal exploration.

Part 815 of this chapter, *Permanent Program Performance Standards—Coal Exploration,* shall apply to any person conducting coal exploration operations.

§ 921.816 Performance standards—surface mining activities.

Part 816 of this chapter, *Permanent Program Performance Standards—Surface Mining Activities,* shall apply to any person who conducts surface coal mining and reclamation operations.

§ 921.817 Performance standards—underground mining activities.

Part 817 of this chapter, *Permanent Program Performance Standards—Underground Mining Activities,* shall apply to any person who conducts underground coal mining operations.

§ 921.819 Special performance standards—auger mining.

Part 819 of this chapter, *Special Permanent Program Performance Standards—Auger Mining,* shall apply to any person who conducts surface coal mining operations which include auger mining.

§ 921.823 Special performance standards—operations on prime farmland.

Part 823 of this chapter, *Special Permanent Program Performance Standards—Operations on Prime Farmland,* shall apply to any person who conducts surface coal mining and reclamation operations on prime farmlands.

§ 921.824 Special performance standards—mountaintop removal.

Part 824 of this chapter, *Special Permanent Program Performance Standards—Mountaintop Removal,* shall apply to any person who conducts surface coal mining operations constituting mountaintop removal mining.

§ 921.826 Special performance standards—operations on steep slopes.

Part 826 of this chapter, *Special Permanent Program Performance Standards—Operations on Steep Slopes,* shall apply to any person who conducts surface coal mining and reclamation operations on steep slopes.

§ 921.827 Special performance standards—coal processing plants and support facilities not located at or near the minesite or not within the permit area for a mine.

Part 827 of this chapter, *Special Permanent Program Performance Standards—Coal Processing Plants and Support Facilities Not Located at or Near the Minesite or Not Within the Permit Area for a Mine,* shall apply to any person who conducts surface coal mining and reclamation operations which includes the operation of coal processing plants and support facilities not located at or near the minesite or not within the permit area for a mine.

§ 921.828 Special performance standards—in situ processing.

Part 828 of this chapter, *Special Permanent Program Performance Standards—In Situ Processing,* shall apply to any person who conducts in situ processing activities.

§ 921.842 Federal inspections.

(a) Part 842 of this chapter, *Federal Inspections,* shall apply to all exploration and surface coal mining and reclamation operations.

(b) The Secretary will furnish copies of inspection reports and reports of any enforcement actions taken to the Massachusetts Department of Environmental Management upon request.

§ 921.843 Federal enforcement.

(a) Part 843 of this chapter, *Federal Enforcement,* shall apply when enforcement action is required for violations on exploration and surface coal mining and reclamation operations.

(b) The Office will furnish a copy of any enforcement document to the Massachusetts Department of Environmental Management upon request.

§ 921.845 Civil penalties.

Part 845 of this chapter, *Civil Penalties,* shall apply when civil penalties are assessed for violations on surface coal mining and reclamation operations.

§ 921.955 Certification of blasters.

Parts 955 of this chapter, *Certification of Blasters in Federal Program States and on Indian Lands*, shall apply to the training, examination and certification of blasters for surface coal mining and reclamation operations.

[51 FR 19462, May 29, 1986]

PART 922—MICHIGAN

Sec.
922.700 General.
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922.707 Exemption for coal extraction incident to government-financed highway or other construction.
922.761 Areas designated unsuitable for surface coal mining by act of Congress.
922.762 Criteria for designating areas as unsuitable for surface coal mining operations.
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922.827 Special performance standards—coal processing plants and support facilities not located at or near the minesite or not within the permit area for a mine.
922.828 Special performance standards—in situ processing.
922.842 Federal inspections.
922.843 Federal enforcement.
922.845 Civil penalties.
922.955 Certification of blasters.

AUTHORITY: Pub. L. 95-87, 91 Stat. 445 (30 U.S.C. 1201 *et seq.*)

SOURCE: 47 FR 47162, Oct. 22, 1982, unless otherwise noted.

§ 922.700 General.

(a) This part contains all rules that are applicable to surface coal mining operations in Michigan which have been adopted under the Surface Mining Control and Reclamation Act of 1977.

(b) The rules in this part cross-reference pertinent parts of the permanent program regulations in this chapter. The full text of a rule is in the permanent program rule cited under the relevant section of the Michigan Federal program.

(c) The rules in this part apply to all surface coal mining operations in Michigan conducted on non-Federal and non-Indian lands. The rules in Subchapter D of this chapter apply to operations on Federal lands in Michigan.

(d) The information collection requirements contained in this part do not require approval by the Office of Management and Budget under 44

U.S.C. 3507 because there are fewer than ten respondents annually.

(e) The following provisions of Michigan laws provide, where applicable, for more stringent environmental control and regulation of surface coal mining operations than do the provisions of the Act and the regulations in this chapter. Therefore, pursuant to section 505(b) of the Act, they shall not be construed to be inconsistent with the Act:

(1) The Michigan Reclamation of Mining Lands, Act 92 (1970), MCL section 425.181 *et seq.* as amended, to the extent that it regulates surface coal mining operations which affect two acres or less; or where less than 250 tons of coal are removed or intended to be removed for commercial use or sale in one location or; or where the extraction of coal is incidental to the extraction of other minerals and where coal does not exceed 16⅔ per centum of the tonnage of minerals removed for purposes of commercial use or sale; or coal explorations subject to section 512 of the Act (30 U.S.C. 1262) or; where the extraction of coal is an incidental part of Federal, State, or local government-financed highway or other construction.

(2) Michigan Farmland and Open Space Preservation Act, MCL section 554.701, pertaining to land use restrictions including mineral extraction.

(3) Michigan Solid Waste Regulations pertaining to solid waste management, MCL section 299.401, R-325.3231.

(4) Michigan noxious weed statute and regulations containing the noxious weed list, MCL section 243.61.

(f) The following are Michigan laws that interfere with the achievement of the purposes and requirements of the Act and are, in accordance with section 504(g) of the Act, preempted and superseded:

The Michigan Reclamation of Mining Lands Act, MCL section 425.181 *et seq.* as amended, but not to the extent that it regulates surface coal mining operations which affect two acres or less; or where less than 250 tons of coal are removed or intended to be removed for commercial use in one location; or where the extraction of coal is incidental to the extraction of other minerals and where coal does not exceed 16⅔ per centum of the tonnage of minerals removed for purposes of commercial use or sale; or coal explorations subject to section 512 of the Act (30 U.S.C. 1262); or where the extraction of coal is an incidental part of Federal, State, or local government-financed highway or other construction.

§ 922.701 General.

Sections 700.5, 700.11, 700.12, 700.13, 700.14, 700.15 and Part 701 of this chapter shall apply to surface coal mining operations in Michigan.

§ 922.707 Exemption for coal extraction incident to government-financed highway or other construction.

Part 707 of this chapter, *Exemption for Coal Extraction Incident to Government-Financed Highway or Other Construction*, shall apply to surface coal mining and reclamation operations.

§ 922.761 Areas designated unsuitable for surface coal mining by Act of Congress.

Part 761 of this chapter, *Areas Designated by Act of Congress*, shall apply to surface coal mining and reclamation operations.

§ 922.762 Criteria for designating areas as unsuitable for surface coal mining operations.

Part 762 of this chapter, *Criteria for Designating Areas Unsuitable for Surface Coal Mining Operations*, shall apply to surface coal mine operations beginning May 28, 1983.

§ 922.764 Process for designating areas unsuitable for surface coal mining operations.

Part 764 of this chapter, *State Processes for Designating Areas Unsuitable for Surface Coal Mining Operations*, pertaining to petitioning, initial processing, hearing requirements, decisions, data base and inventory systems, public information, and regulatory responsibilities shall apply to surface coal mine operations beginning one year after May 28, 1983.

§ 922.770 General requirements for permits and exploration procedures.

(a) Part 770 of this chapter, *General Requirements for Permit Systems Under State Programs*, shall apply to surface coal mining and exploration operations.

(b) Where applicable, no person shall conduct surface coal exploration operations which result in the removal of more than 250 tons in one location, or surface coal mining operations without permits issued pursuant to the: Michigan Construction and Maintenance Act, MCL section 254.25, pertaining to the alteration of watercourses; Michigan Dams in Streams or Rivers Act of 1963, MCL section 281.131; Michigan Explosives Act of 1970, MCL section 29.41, pertaining to the use of explosives (permit is issued by an officer of a local police or sheriff's department or a designated officer of the State police); Michigan Hazardous Waste Management Act of 1980, MCL section 299.501; Michigan Inland Lake and Streams Act of 1972, MCL section 281.951; Michigan Mineral Wells Act of 1969, MCL section 319.211; Michigan Sand Dune Protection and Management Act of 1976, MCL section 281.651; Michigan Solid Waste Management Act of 1978, MCL section 299.401; Michigan Water Resources Commission Act, MCL section 323.1; Michigan Water Resources Commission General Rules, R-323.1001 *et seq.*; Michigan Water Quality Standards, R-323.1041; the Michigan Wetland Protection Act of 1969, MCL section 281.701; Michigan Aboriginal Records and Antiquities Act, MCL section 299.51; Michigan Great Lakes Submerged Lands Act, MCL section 322.701 and the Michigan Historical Activities Act, MCL section 399.201.

(c) The Secretary shall incorporate in the permit, applicable requirements of the Michigan Air Pollution Act of 1965, MCL section 336.11 and the Michigan Administrative Rules for Air Pollution Control, R-336.1101 *et seq.*; the Michigan Control and Eradication of Noxious Weeds Act, MCL section 247.61; the Michigan Endangered Species Act of 1974, MCL section 299.221 and the Michigan Hazardous Waste Management Act of 1980. The Secretary shall further coordinate review of permits, where applicable, with the appropriate State agencies concerning compliance with the Michigan Farmland and Open Space Preservation Act, MCL section 554.71.

§ 922.771 General requirements for permits and permit applications.

(a) Part 771 of this chapter, *General Requirements for Permits and Permit Applications*, shall apply to any person who makes application for a permit to conduct surface coal mine operations on non-Federal and non-Indian lands.

(b) A person who wishes to conduct new surface coal mining and reclamation operations or who wishes a revision of his permit shall file a complete application at least 12 months prior to the date upon which permit issuance or revision is desired, and shall pay to the Secretary a permit fee in accordance with § 736.25 of this chapter.

§ 922.776 General requirements for coal exploration.

(a) Part 776 of this chapter, *General Requirements for Coal Exploration*, shall apply to any person who conducts or seeks to conduct coal exploration operations on non-Federal and non-Indian lands.

(b) The Office shall make every effort to act on an exploration application within 60 days of receipt or such longer time as may be reasonable under the circumstances. If additional time is needed, OSM shall notify the applicant that the application is being reviewed, but that more time is necessary to complete such review, setting forth the reasons and the additional time that is needed.

§ 922.778 Surface mining permit application—minimum requirements for legal, financial, compliance, and related information.

Part 778 of this chapter, *Surface Mining Permit Applications—Minimum Requirements for Legal, Financial, Compliance, and Related Information*, shall apply to any person who makes application for a permit to conduct surface mining and reclamation operations.

§ 922.779 Surface mining permit applications—minimum requirements for information on environmental resources.

Part 779 of this chapter, *Surface Mining Permit Applications—Minimum Requirements for Information on Environmental Resources,* shall apply to any person who makes application to conduct surface mining and reclamation operations.

§ 922.780 Surface mining permit applications—minimum requirements for reclamation and operation plan.

Part 780 of this chapter, *Surface Mining Permit Applications—Minimum Requirements for Reclamation and Operation Plan,* shall apply to any person who makes application to conduct surface coal mining and reclamation operations on non-Federal and non-Indian lands.

§ 922.782 Underground mining permit applications—minimum requirements for legal, financial, compliance, and related information.

Part 782 of this chapter, *Underground Mining Permit Applications—Minimum Requirements for Legal, Financial, Compliance, and Related Information,* shall apply to any person who makes application for a permit to conduct underground mining operations.

922.783 Underground mining permit applications—minimum requirements for information on environmental resources.

Part 783 of this chapter, *Underground Mining Permit Applications—Minimum Requirements for Information on Environmental Resources,* shall apply to any person who submits an application to conduct underground mining operations.

§ 922.784 Underground mining permit applications—minimum requirements for reclamation and operation plan.

Part 784 of this chapter, *Underground Mining Permit Applications—Minimum Requirements for Reclamation and Operation Plan,* shall apply to any person who makes application to conduct underground mining.

§ 922.785 Requirements for permits for special categories of mining.

Part 785 of this chapter, *Requirements for Permits for Special Categories of Mining,* shall apply to each person who makes application for a permit to conduct certain categories of surface coal mining and reclamation operations as specified therein.

§ 922.786 Reviews, public participation, and approval or disapproval of permit applications and permit terms and conditions.

Part 786 of this chapter, *Review, Public Participation, and Approval or Disapproval of Permit Applications and Permit Terms and Conditions,* shall apply to the review of applications made by any person for surface coal mining and reclamation operations.

§ 922.787 Administrative and judicial review of decisions on permit applications.

Decisions on permit applications shall be subject to administrative and judicial review in accordance with Part 787 of this chapter and sections 520, 525 and 526 of the Act.

§ 922.788 Permit review, revisions, and renewals, and transfer, sale, and assignment of rights granted under permits.

Part 788 of this chapter, *Permit Reviews, Revisions, and Renewals, and Transfer, Sale, and Assignment of Rights Granted Under Permits,* shall apply to review, revision, and renewal of permits for surface coal mine operations, and to transfer, sale, and assignment of rights granted under permits.

§ 922.795 Small operator assistance.

Part 795 of this chapter, *Small Operator Assistance,* shall apply to any person making application for assistance under the small operator assistance program.

§ 922.800 General requirements for bonding of surface coal mining and reclamation operations.

Part 800 of this chapter, *General Requirements for Bonding of Surface Coal Mining and Reclamation Oper-*

ations Under Regulatory Programs, shall apply to all surface coal mining and reclamation operations.

§ 922.815 Performance standards—coal exploration.

Part 815 of this chapter, *Permanent Program Performance Standards—Coal Exploration,* shall apply to any person conducting coal exploration operations.

§ 922.816 Performance standards—surface mining activities.

Part 816 of this chapter, *Permanent Program Performance Standards—Surface Mining Activities,* shall apply to any person who conducts surface coal mining and reclamation operations.

§ 922.817 Performance standards—underground mining activities.

Part 817 of this chapter, *Permanent Program Performance Standards—Underground Mining Activities,* shall apply to any person who conducts underground mining operations.

§ 922.818 Special performance standards—concurrent surface and underground mining.

Part 818 of this chapter, *Special Permanent Program Performance Standards—Concurrent Surface and Underground Mining,* shall apply to any person who conducts combined surface and underground mining operations.

§ 922.819 Special performance standards—auger mining.

Part 819 of this chapter, *Special Permanent Program Performance Standards—Auger Mining,* shall apply to any person who conducts surface coal mining operations which include auger mining.

§ 922.823 Special performance standards—operations on prime farmland.

Part 823 of this chapter, *Special Permanent Program Performance Standards—Operations on Prime Farmland,* shall apply to any person who conducts surface coal mining and reclamation operations on prime farmlands.

§ 922.824 Special performance standards—mountaintop removal.

Part 824 of this chapter, *Special Permanent Program Performance Standards—Mountaintop Removal,* shall apply to any person who conducts surface coal mining operations constituting mountaintop removal mining.

§ 922.826 Special performance standards—operations on steep slopes.

Part 826 of this chapter, *Special Permanent Program Performance Standards—Operations on Steep Slopes,* shall apply to any person who conducts surface coal mining and reclamation operations on steep slopes.

§ 922.827 Special performance standards—coal processing plants and support facilities not located at or near the minesite or not within the permit area for a mine.

Part 827 of this chapter, *Special Permanent Program Performance Standards—Coal Processing Plants and Support Facilities not Located at or near the Minesite or not within the Permit Area for a Mine,* shall apply to any person who conducts surface coal mining and reclamation operations which include the operation of coal processing plants and support facilities not located at or near the minesite and not within the permit area for a mine.

§ 922.828 Special performance standards—in situ processing.

Part 828 of this chapter, *Special Permanent Program Performance Standards—In Situ Processing,* shall apply to any person who conducts in situ processing activities.

§ 922.842 Federal inspections.

(a) Part 842 of this chapter, *Federal Inspections,* shall apply to all exploration and surface coal mining and reclamation operations.

(b) In addition to the requirements of Part 842, the Secretary will furnish a copy of each inspection report regarding inspections conducted pursuant to this subpart to the Michigan Department of Natural Resources upon request.

§ 922.843 Federal enforcement.

(a) Part 843 of this chapter, *Federal Enforcement*, shall apply when enforcement action is required for violations on surface coal mining and reclamation operations.

(b) The Office will furnish a copy of each enforcement action document and order to show cause issued pursuant to this subpart to the Michigan Department of Natural Resources, Geological Survey Division upon request.

§ 922.845 Civil penalties.

Part 845 of this chapter, *Civil Penalties*, shall apply when civil penalties are assessed for violations on surface coal mining and reclamation operations.

§ 922.955 Certification of blasters.

Part 955 of this chapter, *Certification of Blasters in Federal Program States and on Indian Lands*, shall apply to the training, examination and certification of blasters for surface coal mining and reclamation operations.

[51 FR 19462, May 29, 1986]

PART 924—MISSISSIPPI

Sec.
924.1 Scope.
924.10 State program approval.
924.16 Required program amendments.

AUTHORITY: Pub. L. 95-87 (30 U.S.C. 1201 *et seq.*).

§ 924.1 Scope.

This part contains all rules applicable only within the State of Mississippi which have been adopted under the Surface Mining Control and Reclamation Act of 1977.

[45 FR 58525, Sept. 4, 1980]

§ 924.10 State program approval.

(a) The Mississippi State program, as submitted on August 2, 1979, and resubmitted on May 27, 1980, is approved, effective September 4, 1980. Copies of the approved program are available at:

(1) Mississippi Department of Natural Resources, Bureau of Geology and Energy Resources, 2525 N. West Street, Jackson, Mississippi 39216. Telephone (601) 354-6228.

(2) Office of Surface Mining Reclamation and Enforcement, Region II, Suite 500, 530 Gay Street, SW., Knoxville, Tennessee 37902. Telephone (615) 637-8060.

(3) Office of Surface Mining, Room 153, Interior South Building, 1951 Constitution Avenue, NW., Washington, D.C. 20240. Telephone: (202) 343-4728.

(b) In its May 16, 1980 opinion, the U.S. District Court for the District of Columbia ordered the Secretary to affirmatively disapprove any regulation in a State program which incorporates a suspended or remanded regulation. A list follows of provisions contained in the Mississippi submission which are based on suspended or remanded Federal regulations. These regulations are affirmatively disapproved to the extent indicated or, if no limitation is indicated, in their entirety.

(1) The definition of "mine plan area" in section 101 and its use in sections 179, 180, 183 and 184 to the extent the definition includes areas outside the permit area.

(2) Sections 100.11 (a), (b), and (c) insofar as they may be read to retain discretion in the Mississippi DNR to grant an exemption from reconstruction of existing structures after making the findings in sections 180.12 or 184.12.

(3) In section 161.5(2)(i), the "all permits test" used in defining valid existing rights to the extent it does not include persons who had made good faith applications for all necessary permits, but not yet received them.

(4) In section 161.5, the definition of "public road."

(5) Under sections 161.11(c) and .12(f)(1) the limitation on surface mining operations which will affect places eligible for listing on the National Register of Historical Places.

(6) Sections 161.11(c) and .12(f)(1) insofar as they would apply to privately-owned places listed on the National Register of Historic Places in addition to publicly-owned places.

(7) Sections 176.11(b) (3) and (5) to the extent that they require the notice of exploration to include a map rather than a description only.

(8) Sections 179.20 and 180.16.

(9) Sections 179.21 and 183.21, to the extent they apply to land not qualifying as prime farmland.

(10) Section 183.14(a)(1) insofar as it requires a geologic description of the strata down to and immediately below any coal seam for areas to be affected only by "surface operations and facilities" where removal of overburden down to level of coal seam will not occur.

(11) Sections 183.25 (c), (h) and (i).

(12) Section 185.17(a) insofar as it exempts permits approved prior to August 3, 1977, from prime farmland reconstruction standards.

(13) Sections 185.17(b)(3) and 223.14(c).

(14) Section 185.17(b)(8).

(15) In section 186.5 the words "or has not been" from the definition of "irreparable harm to the environment."

(16) Sections 206.12(e)(6)(iii) and (g)(7)(iii).

(17) Section 207.11(e) insofar as it does not allow citizen access to the mine site for performance bond release.

(18) Section 208.14(b).

(19) Sections 216.42(a) (1) and (7) insofar as they require that runoff from reclaimed lands meet the same effluent limitations as that for actively mined lands.

(20) Sections 216.42(b) and 217.42(b).

(21) Sections 216.46(b) and 217.46(b).

(22) Sections 216.46(c) and 217.46(c).

(23) In sections 216.46(d) and 217.46(d), the words "and shall have a discharge rate to achieve and maintain the required theoretical detention time."

(24) Sections 216.46(h) and 217.46(h).

(25) Section 216.65(f) and 217.65(f).

(26) Sections 216.83(a) and 217.83(a) to the extent that they would preclude an exemption from the underdrain requirement for coal processing waste banks where an operator can demonstrate that an alternative to the required subdrainage systems would ensure structural integrity of the waste bank and protection of ground or surface water quality.

(27) Sections 216.95 and 217.95.

(28) Sections 216.103(a)(1) and 217.103(a)(1).

(29) Sections 216.115, 217.115, 223.11(c) 223.15(b) and 223.15(c), to the extent that they exceed the statutory authority which requires only that restored land be "capable" of supporting the designated use.

(30) Sections 216.116(b) and 217.116(b) to the extent that they delay triggering an operator's five year period of responsibility for revegetation until the operator meets the standard for vegetative cover.

(31) Sections 216.133(b)(1) and 217.133(b)(1), to the extent that an operator is not allowed to choose between restoring the land to condition capable of supporting prior-to-mining use or to higher use.

(32) Sections 216.133(c)(4) and (9) and 217.133(c)(4) and (9) concerning information needed to support alternative land uses to the extent that the operator need only demonstrate a "reasonable likelihood" of attaining a post mining use that is higher or better than previous use.

(33) Sections 216.150—176 and 217.150—176 concerning roads to the extent that notice and opportunity to comment must be provided to the public on the road classification system.

(34) Section 217.52(a), the language "on the recharge capacity of reclaimed land and * * *", concerning groundwater monitoring to the extent that special precautionary measures for underground mining operations are not necessary to protect the recharge capacity of water bearing formations.

(35) Section 217.54 concerning hydrologic balance to the extent that water replacement is only required for surface coal mining operations.

(36) Sections 217.101(b)(1) and 217.102 concerning backfilling and grading to the extent that Appropriate Original Contour (AOC) regulations do not provide flexibility for settled fills that have become stabilized and revegetated.

(37) Part 223 concerning performance standards for operations on prime farmlands to the extent that it prevents an exemption for surface facilities actively used over extended pe-

riods but which affect a minimal amount of land.

[45 FR 58525, Sept. 4, 1980]

§ 924.16 Required program amendments.

Pursuant to 30 CFR 732.17, Mississippi, prior to allowing coal exploration or surface mining operations in the event such activities should develop, shall submit and have approved by the Office of Surface Mining, amendments to its permanent regulatory program to be in accordance with SMCRA and consistent with the Federal regulations at 30 CFR Chapter VII in existence at the time.

[50 FR 43570, Oct. 28, 1985]

PART 925—MISSOURI

Sec.
925.1 Scope.
925.10 State program approval.
925.15 Approval of regulatory program amendments.
925.16 Required program amendments.
925.20 Approval of the Missouri abandoned mine reclamation plan.

§ 925.1 Scope.

This part contains all rules applicable only within Missouri that have been adopted under the Surface Mining Control and Reclamation Act of 1977.

(Secs. 102, 201, and 503, Pub. L. 95-87 (30 U.S.C. 1202, 1211, and 1253))

[45 FR 77027, Nov. 21, 1980]

§ 925.10 State program approval.

(a) The Missouri State program submitted on February 1, 1980, and as amended and clarified on May 14, 1980, was conditionally approved effective November 21, 1980. Copies of the approved program, as amended, are available for review at:

(1) Missouri Land Reclamation Commission, 1026-D Northeast Drive, Jefferson City, Missouri 65101.

(2) Office of Surface Mining, Kansas City Field Office, Scarritt Building, 818 Grand Avenue, Kansas City, Missouri 64106.

(3) Office of Surface Mining, Administrative Record, Room 5124, 1100 L Street, NW., Washington, D.C. 20240.

(b) In accordance with the May 16, 1980 opinion of the U.S. District Court for the District of Columbia, the Secretary affirmatively disapproves the following list of provisions contained in the Missouri program. These regulations are affirmatively disapproved to the extent indicated or, if no limitation is indicated, in their entirety.

(1) Section 10 CSR 40-5.010(1)(A) 1 B(I), the definition of "valid existing rights," to the extent it does not allow recognition of such rights an operator may claim by having made a good faith effort to obtain all permits before 8/3/77 as stipulated by the court's decision.

(2) Section 10 CSR 40-8.010 No. 47, the definition of "mine plan area," and the use of the term in section 10 CSR 40-6.040 and 10 CSR 40-6.050 to the extent of the court's order regarding requirements of information outside the permit area.

(3) Sections 10 CSR 40-6.040(11) and 10 CSR 40-6.050(7) requiring a permit application to contain a study of fish and wildlife and to include a fish and wildlife reclamation plan.

(4) Section 10 CSR 40-6.040(12) to the extent it requires a soil survey for lands other than those which a reconnaissance inspection suggests may be prime farmland.

(5) Section 10 CSR 40-7.040(4)(B) to the extent it allows the regulatory authority to forfeit and keep the entire amount of a bond where the entire amount is not needed to complete the reclamation.

(6) Section 10 CSR 40-3.120(5) to the extent it requires an operator who proposes range or pasture as the postmining land use to actually use the land for grazing for the last two years of bond liability.

(7) Sections 10 CSR 40-4.030(1)(C), 10 CSR 40-4.030(5)(B), and 10 CSR 40-4.030(5)(C) to the extent they require an operator on prime farmland to actually return the land to crop production.

(8) Section 10 CSR 40-3.120(6)(B) to the extent that it states that an operator's responsibility for successful revegetation is not commenced until the vegetation reaches 90 percent of the natural cover in the area.

(9) Section 10 CSR 40-3.130 (3)(D) and (3)(I) to the extent it requires an operator to provide "letters of commit-

ment" for proposed land use changes or for proposed cropland use.

(10) Sections 10 CSR 40-6.060(4)(B)3 and 10 CSR 40-4.030(4)(C) concerning excessive soil compaction.

(11) Sections 10 CSR 40-3.040(2)(A)1 and 7 to the extent they apply effluent standards to the reclamation phase of a surface coal mining operation.

(12) Section 10 CSR 40-3.040(2)(B) relating to effluent standard exemptions during major storm periods.

(13) Section 10 CSR 40-3.040(6)(B) concerning sediment storage volume in sediment ponds.

(14) Section 10 CSR 40-3.040(6)(C) concerning detention time for water in sediment ponds.

(15) Section 10 CSR 40-3.040(6)(D) to the extent it requires dewatering devices to have a discharge rate to achieve and maintain the theoretical detention time for sediment ponds.

(16) Section 10 CSR 40-3.040(6)(H) concerning sediment removal from sediment ponds.

(17) Section 10 CSR 40-3.050(4)(F) requiring special approval prior to blasting within 1,000 feet of certain buildings and 500 feet of other facilities and which restricts blasting at distances greater than 300 feet.

(18) Section 10 CSR 40-3.08(3)(A) concerning coal processing waste banks, to the extent it precludes a possible exemption from the underdrain requirement where the operator can demonstrate that an alternative would ensure structural integrity of the waste bank and protection of water quality.

(19) Section 10 CSR 40-3.090 concerning air resources protection, to the extent it applies to air pollution not caused by erosion.

(20) Section 10 CSR 40-3.140(1)-(21) concerning performance standards for three classes of roads.

(21) Section 10 CSR 40-8.010-75 the definition of "roads" that is used in sections 10 CSR 40-3.140(1)-(21).

(22) Section 10 CSR 40-6.060(4)(A)8 to the extent that it requires prime farmland reclamation target yields to be based on estimated yields under a high level of management rather than a level of management equivalent to that used on prime farmlands in the surrounding area.

(23) Section 10 CSR 40-8.070(2)(E) 1A and 1B relating to exemptions for existing structures to the extent that the exemptions are not mandatory after the appropriate findings are made.

(24) Section 10 CSR 40-3.130(2)(A) to the extent it does not allow restoration of lands to the conditions they were capable of supporting prior to any mining.

(25) Sections 10 CSR 40-5.101(2)(c) and 10 CSR 40-5.010(1)(F) to the extent that they prohibit or restrict mining near places only eligible for listing on the National Register of Historic Places, and the words "or a statutory or regulatory responsibility for" in section 10 CSR 40-5.010(1)(F) are disapproved. Both rules are disapproved to the extent that they apply to privately-owned places listed on the National Register of Historic Places in addition to publicly-owned places.

(26) Section 10 CSR 40-7.020(2)(E)5C to the extent it requires cessation of operations upon the insolvency of a surety.

(27) Section 10 CSR 40-7.040(2)(C) to the extent that it limits bond liability to protection of the hydrologic balance.

(28) Section 10 CSR 40-3.110(3)(A)1 to the extent it does not provide operators the option of treating acid-forming and toxic-forming material in lieu of covering such materials.

(29) Section 10 CSR 40-7.010(7)(D) to the extent that the exception the regulatory authority may grant might be from all of section 216.

(30) Section 10 CSR 40-8.070(2)(B) concerning the two-acre exemption, insofar as it applies to any operation by the person who affects or intends to affect more than two acres of physically unrelated sites within one year when the area affected at each site does not exceed two acres.

(31) Section 10 CSR 40-5.010(1)(J) the definition of "public road."

(32) Section 10 CSR 40-6.060(4)(A) concerning the prime farmland grandfather clause.

(33) Section 10 CSR 40-6.060(1)(B) to the extent that "or has not been" is no longer part of the definition of "ir-

reparable damage to the environment."

(34) Section 10 CSR 40-8.040 to the extent it imposes a civil penalty point system.

(30 U.S.C. 1201, *et seq.*)

[45 FR 77027, Nov. 21, 1980, as amended at 48 FR 1957, Jan. 17, 1983; 49 FR 19476, May 8, 1984]

§ 925.15 Approval of regulatory program amendments.

(a) The Missouri permanent program amendments of December 3, 1980 and March 12, 1981, are approved effective July 23, 1982.

(b) The Missouri permanent program amendments of September 7, 1982 and October 13, 1982, are approved effective January 17, 1983.

(c) The following amendments were approved effective May 8, 1984.

(1) Revisions to the Missouri statute submitted April 13, 1983, contained in Senate Bill 737, enacted April 7, 1982, repealing sections 444.805 and 444.830, and adding sections 444.805, 444.830, 444.950, 444.955, 444.960, 444.965 and 444.970.

(2) Missouri revised regulations submitted April 13, 1983, adopted April 11, 1983, amending 10 CSR 40-3.120, 40-3.270, 40-4.030, and 40-8.030; rescinding 40-7.010, 40-7.020, 40-7.030, and 40-7.040; and adding 40-7.011, 40-7.021, 40-7.031, 40-7.041 and 40-7.050; with the exception of those provisions identified in section 925.16 which require further amendment.

(30 U.S.C. 1201, *et seq.*)

[48 FR 1957, Jan. 17, 1983, as amended at 49 FR 19476, May 8, 1984]

§ 925.16 Required program amendments.

Pursuant to 30 CFR 732.17, Missouri is required to make the following program amendments:

(a) Amend its program at 10 CSR 40-3.120(7)(A)2A, consistent with 30 CFR 816.116(b)(3)(ii), to require two growing seasons before qualifying to meet the revegetation standard for trees and shrubs.

(b) Amend its program at 10 CSR 40-7.011(3)(B)(2), consistent with 30 CFR 800.21, to require that the bank issuing the certificates must waive all rights of setoff or liens against those certificates.

(c) Amend its program at 10 CSR 40-7.011(3)(B) and 40-7.011(3)(C), consistent with 30 CFR 800.16(e), to require notification to the regulatory authority and the permittee of the insolvency or bankruptcy of the bank issuing letters of credit or holding certificates of deposit, and to initiate the subsequent chain of required events.

(d) Amend its program to delete the provisions at 10 CSR 40-7.021(2)(A) and 10 CSR 40-7.021(2)(C) allowing release of liability on certain areas where phase I or II reclamation has not been completed.

(e) Amend its program at 10 CSR 40-7.031(2), consistent with 30 CFR 843.13, to specify the procedures used to act on a complaint for permit revocation.

(f) Amend its program to: (1) Specify that the 25 cents per ton penalty in 10 CSR 40-7.041(3)(B) may be assessed in addition to, but not in lieu of, the civil penalty provisions of 10 CSR 40-8.040, and (2) mandate the issuance of a cessation order if the violation (delinquent payment) is not abated within the time set.

(g) Amend its program at 10 CSR 40-8.030(6)(B)2 to require the same standards for issuance of cessation orders for failure to abate a notice of delinquent reclamation as for failure to abate other violations.

(h) Amend its program at 10 CSR 40-8.030(18) to provide: (1) Standards for extension of the 90-day abatement period for notices of delinquent reclamation consistent with 30 CFR 843.12; and (2) express language clarifying that the penalty of 25 cents per ton may be imposed only in addition to, but not in place of, the approved civil penalty provisions of 10 CSR 40-8.040.

(i) Pursuant to 30 CFR 732.17, Missouri is required to submit for OSM's approval the following proposed program amendments by the dates specified:

(1) By August 6, 1986, Missouri shall submit for OSM's approval:

(i) Rules governing the training, examination and certification of blasters and

(ii) A program to examine and certify all persons who are directly responsible for the use of explosives in surface coal mining operations.

(Pub. L. 95-87, 30 U.S.C. 1201 *et seq*)

[49 FR 19476, May 8, 1984, as amended at 50 FR 47219, Nov. 15, 1985]

§ 925.20 Approval of the Missouri Abandoned Mine Reclamation Plan.

The Missouri Abandoned Mine Reclamation Plan as submitted on September 11, 1981, is approved. Copies of the approved Plan are available at the following locations:

Office of Surface Mining Reclamation and Enforcement, Missouri State Office, 818 Grand Avenue, Kansas City, Missouri 64106

Missouri Department of Natural Resources, Land Reclamation Commission, P.O. Box 1368, 1026 D Northeast Dr., Jefferson City, Missouri 65102

Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 5315, 1100 L Street, N.W., Washington, D.C.

(Secs. 102, 201, and 503, Pub. L. 95-87 (30 U.S.C. 1202, 1211, and 1253))

[47 FR 4254, Jan. 29, 1982]

PART 926—MONTANA

Sec.

926.1 Scope. [Reserved]
926.10 State regulatory program approval.
926.15 Approval of amendments to State regulatory program.
926.16 Required program amendments.
926.20 Approval of the Montana abandoned mine reclamation plan.
926.30 State-Federal Cooperative Agreement.

§ 926.1 Scope. [Reserved]

§ 926.10 State regulatory program approval.

The Montana permanent program submitted on August 3, 1979, as amended November 13, 1979, January 4, January 9, January 10, January 12, January 13, January 30, February 1, and February 20, 1980, and as further amended November 3, 1980, and August 26, 1981, is approved effective upon publication of this notice. Copies of the approved program, as amended, are available at:

Montana Department of State Lands, 1625 11th Avenue, Capitol Station, Helena, Montana 59601, Telephone: (406) 449-2074

Montana Department of State Lands, Field Office, 1245 North 29th Street, Billings, Montana 59101, Telephone: (406) 657-2217

Office of Surface Mining, Room 5315, 1100 "L" Street NW., Washington, D.C. 20240, Telephone: (202) 343-4728

(30 U.S.C. 1292(d))

[47 FR 6268, Feb. 11, 1982]

§ 926.15 Approval of amendments to State regulatory program.

Statutory changes adopted during the 1983 Montana legislative session as listed below are approved effective January 3, 1984.

(a) Section 82-4-237, MCA, amended.

(b) Section 82-4-251(4), MCA, language deleted.

(c) Section 82-4-254, MCA, amended.

(d) The following amendment submitted to OSM on April 2, 1984, is approved effective January 3, 1985: Montana's regulations governing service of notices and orders at § 26.4.1206 of the Administrative Rules of Montana (ARM), informal hearings for notices of noncompliance and cessation orders which cease mining at ARM 26.4.1207, the effect of an inability to comply with a notice or order at ARM 26.4.1208, the continuation of reclamation operations and health and safety related activitities under notices and orders at ARM 26.4.1209, the procedure for assessment and waiver of civil penalties at ARM 26.4.1211, and a point system for determining civil penalty amounts and waivers thereof at ARM 26.4.1212.

(e) The following amendment submitted to OSM on January 3, 1984 and modified on May 25, 1984, September 20, 1984 and August 16, 1985 is approved effective [November 18, 1985]: Montana rule 26.4.310 requiring the submission of a blasting plan as part of a person's mine permit application; Sections 26.4.621 through 26.4.626 of the Montana rules which identify the requirements governing the use of explosives; and Sections 26.4.1260 through 26.4.1263 of the Montana rules which address the Montana blaster training, examination and certification program.

(f) The following amendment as submitted to OSMRE on July 3, 1985, is approved effective February 14, 1986: Modification to the Montana Strip and Underground Mine Reclamation Act at the following sections: 82-4-231 concerning submission of and action on reclamation plans; 82-4-232 concerning bond release procedures and 82-4-254 concerning penalties for violations of the Montana program.

(Pub. L. 95-87, Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*))

[49 FR 67, Jan. 3, 1984, as amended at 50 FR 260, Jan. 3, 1985; 50 FR 47388, Nov. 18, 1985; 51 FR 5517, Feb. 14, 1986]

§ 926.16 Required program amendments.

Pursuant to 30 CFR 732.17, Montana is required to submit for OSM's approval the following proposed program amendments by the dates specified.

(a) By May 31, 1984, Montana shall submit for OSM's approval—

(1) Rules governing the training, examination and certification of blasters and

(2) A program to examine and certify all persons who are directly responsible for the use of explosives in surface coal mining operation.

(Pub. L. 95-87, Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*))

[49 FR 20287, May 14, 1984]

§ 926.20 Approval of Montana abandoned mine land reclamation plan.

The Montana Abandoned Mine Land Reclamation Plan, as submitted on October 24, 1980, is approved. Amendments to this Plan, as submitted on April 20, 1983 are also approved. Copies of the approved program, as amended, are available at:

State of Montana, Department of State Lands, Reclamation Division, 1625 Eleventh Avenue, Helena, Montana 59620

Office of Surface Mining Reclamation and Enforcement, P.O. Box 1420, 935 Pendell Blvd., Mills, Wyoming 82644

Office of Surface Mining Reclamation and Enforcement, Administrative Record—Rm. 5315, 1100 "L" Street, NW., Washington, D.C. 20240

(Pub. L. 95-87, 340 U.S.C. 1201, et seq.)

[48 FR 37384, Aug. 18, 1983]

§ 926.30 State-Federal cooperative agreement.

COOPERATIVE AGREEMENT

The State of Montana and the Department of the Interior enter into a State/Federal Cooperative Agreement to read as follows:

This is a Cooperative Agreement between the State of Montana, acting by and through the Governor (referred to as the "Governor") and the United States Department of the Interior, acting by and through the Secretary of the Interior (referred to as the "Secretary").

Article I: Introduction and Purpose

A. This Agreement is authorized by section 523(c) of the Surface Mining Control and Reclamation Act (Federal Act), Pub. L. 95-87, 30 U.S.C. 1273(c), which allows a State with a permanent regulatory program approved under 30 U.S.C. 1253, to elect to enter into an agreement for the regulation and control of surface coal mining on Federal lands, and by the Montana Strip and Underground Mine Reclamation Act, Part 2, Chapter 4, Title 82, Montana Code Annotated (hereinafter "State Act"). This agreement provides for State regulations of surface coal mining and reclamation operations on Federal lands consistent with the State and Federal Acts and the Federal lands program.

B. The purpose of the Agreement is to (1) foster State-Federal cooperation in the regulation of surface coal mining and reclamation operations; (2) eliminate unnecessary intergovernmental overlap and duplication; and (3) provide effective regulation of surface coal mining operations on Federal lands and uniform regulation on all non-Indian lands.

Article II: Effective Date

This Cooperative Agreement is effective following signing by the Secretary and the Governor and upon final publication as rulemaking in the FEDERAL REGISTER.[1] This Agreement shall remain in effect until terminated as provided in Article X.

Article III: Scope

This Agreement makes the laws, regulations, terms and conditions of Montana's permanent State program conditionally approved effective April 1, 1980, as amended, 30 CFR Part 926 (State program) for the administration of the Federal Act, applicable to Federal lands within Montana except as otherwise stated in this Agreement, the Federal Act, 30 CFR 745.13, or other applicable laws.

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[1] See explanation of Article II at 46 FR 20983, Apr. 8, 1981.

Article IV: Requirements for Cooperative Agreement

The Governor and the Secretary affirm that they will comply with all of the provisions of this Agreement and will continue to meet all conditions and requirements specified in this Article.

A. *Responsible Administrative Agency.* The Montana Department of State Lands (State Lands) is, and shall continue to be, the sole agency responsible for administering this Agreement on behalf of the Governor on Federal lands throughout the State. The Office of Surface Mining Reclamation and Enforcement (OSM) shall administer this Agreement on behalf of the Secretary, in accordance with the Regulations in 30 CFR Chapter VII.

B. *Authority of State Agency.* State Lands has and shall continue to have authority under State law to carry out this Agreement.

C. *Funds.* The State will devote adequate funds to the administration and enforcement on Federal lands in Montana of the requirements contained in the State program. If the State complies with the terms of this Agreement, and if necessary funds have been appropriated, OSM shall reimburse the State as provided in section 705(c) of the Federal Act and 30 CFR 735.16 for costs associated with carrying out responsibilities under this Agreement.

D. *Reports and Records.* State Lands shall make reports to the OSM Regional Director, Region V (Regional Director), containing information respecting its compliance with the terms of this Agreement as the Regional Director shall from time to time require pursuant to 30 CFR 745.12(c). State lands and the Secretary shall exchange, upon request, information developed under this Agreement. The Secretary shall provide State Lands with a copy of any approved evaluation report prepared concerning State administration and enforcement of this Agreement.

E. *Personnel.* State Lands shall have the necessary personnel to fully implement this Agreement in accordance with the provisions of the Federal and State Acts and the State Program.

F. *Equipment and Laboratories.* State Lands shall have access to equipment, laboratories, and facilities with which all inspections, investigations, studies, tests, and analyses can be performed and which are necessary to carry out the requirements of this Agreement.

G. *Permit Application Fees.* The amount of the fee accompanying an application for a permit shall be determined in accordance with Section 82-4-223(1) MCA. All permit fees shall be retained by the State and deposited in the General Fund. The Financial Status Report submitted pursuant to 30 CFR 725.23 shall include a report of the amount of permit application fees collected and attributable to Federal lands during the prior Federal fiscal year. This amount shall be deducted from the reimbursement to the State provided for in section 705(c) of the Federal Act, 30 CFR 735.16 and paragraph IV C of this Agreement.

Article V: Policies and Procedures: Mine Plan Review

A. *Contents of Mining Plans and Permits.* The Governor and the Secretary agree and hereby require that an operator on Federal lands shall submit an identical mining and reclamation plan and permit application or an application for a major modification to an approved mining plan and permit in an appropriate number of copies to State Lands and the Regional Director. The plan and permit application shall be in the form required by State Lands and include any supplemental forms required by the Secretary. The plan and application shall include the information required by, or necessary for, State Lands and the Secretary to make a determination of compliance with:

(1) Section 82-4-222 MCA;

(2) Title 26, Chapter 4, Subchapter 3, Administrative Rules of Montana;

(3) Applicable terms and conditions of the Federal coal lease;

(4) Applicable requirements of other Federal laws and regulations and the State Program.

A permit applicant on Federal lands in Montana shall satisfy the requirements of 30 CFR 741.12(b)(1) and 30 CFR 741.13(c) by submitting the information required by Montana.

B. *Mine Plan Review Procedures.* 1. State Lands shall assume primary responsibility for the analysis and review of applications required by 30 CFR 741.13 for surface coal mining reclamation permits on Federal lands in Montana. The Secretary shall, as requested, assist the State through the Regional Director in this analysis and review. The Secretary shall, in addition, evaluate the State's analysis and conclusions as necessary to independently determine whether the Secretary concurs in the State's decision.

2. State Lands will be the primary point of contact for operators regarding the processing of mining plans and permit applications. State Lands will be responsible for informing the applicant of all joint State-Federal determinations. State Lands shall send a copy of all correspondence with the applicant and any information received from the applicant which may have a bearing on deci-

sions regarding the mine plan and permit application to the Regional Director. Except in exigent circumstances, OSM will not independently initiate contacts with applicants regarding completeness or deficiencies of plans and applications with respect to matters which are properly within the jurisdiction of State Lands. The Secretary reserves the right to act independently of the State to carry out his responsibilities under laws other than the Federal Act and in instances of disagreement under the Federal Act. A copy of all independent correspondence with the applicant that may have a bearing on decisions regarding the mining plan and permit application shall be sent to the State.

3. The Regional Director is responsible to ensure that any information OSM receives concerning the application is sent to State Lands. The Regional Director and State Lands shall regularly coordinate with each other during the permit review process as needed.

4. The Regional Director shall be responsible for obtaining, on a timely basis, the views of all Federal agencies with jurisdiction or responsibility over a mine plan and permit application on Federal lands in Montana and for making these views known to State Lands. State Lands shall keep the Regional Director informed of findings during the review which bear on the responsibilities of other Federal agencies. The Regional Director shall take appropriate steps to facilitate discussions between State Lands and the concerned agencies wherever desirable to resolve issues or problems identified in the review.

5. Upon receipt of a mining plan and permit application, the Regional Director shall begin a review of apparent completeness of the application. The Regional Director shall identify a person as the OSM application manager. The OSM application manager shall serve as the primary point of contact between OSM and State Lands throughout the review process and shall be responsible for identifying areas of avoidable duplication of review and analysis, which shall be eliminated by the Regional Director. Not later than 90 days after an application has been received, OSM and State Lands shall meet to discuss the application and agree upon a work plan and schedule for the review of the application. The Regional Director shall also inform State Lands of any specific or general areas of concern which require special handling or analysis. State Lands shall inform the Regional Director where OSM assistance will be needed to perform any specific or general analysis or prepare any studies or similar work.

6. Compliance with Montana ARM 26.4.401 through .411 replaces the requirements of 30 CFR 741.18 except that all public meetings and hearings during the period prior to the initial permit decision shall be announced and conducted jointly.

7. Except as otherwise agreed for a specific mine plan and permit application, all environmental assessments and analyses to comply with NEPA and MEPA shall be conducted as authorized by 40 CFR 1506.2. To the extent allowed by Federal law and regulation, State Lands and OSM will cooperate to the fullest extent possible so that one Environmental Impact Statement and/or Environmental Assessment will be produced to comply with MEPA and NEPA for a proposed mining and reclamation plan. Such document will be prepared by State Lands if the Secretary provides the State with any necessary funding to complete the statement. The Secretary shall independently evaluate and approve the final document.

8. Unless the work plan provides otherwise, State Lands shall prepare a technical analysis, environmental analysis, and proposed written decision on the mining plan and permit application. Copies of drafts of these documents shall be sent to the Regional Director for his review and comment. The Regional Director shall independently evaluate the documents and inform State Lands within 30 days, unless a later date is mutually agreed upon, of any changes that should be made. State Lands shall consider the comments of the Regional Director and send a final technical analysis, environmental analysis, and proposed decision to the Regional Director for his written concurrence. The Regional Director shall have 30 days to act after receipt of State Lands' final technical analysis, environmental analysis, and proposed decision. If no further changes are required, the Regional Director shall proceed in accordance with 30 CFR 741.21 and inform State Lands of his action. In the event State Lands and the Regional Director cannot agree to the final actions to be taken by State Lands and the Department on the mining plan and permit application, the matter shall be referred to the Governor and Secretary for resolution.

9. Nothing in this agreement shall be construed to limit the Secretary's authority in 30 CFR 741.16, .17, and .21.

Article VI: Inspections

A. State Lands shall conduct inspections on Federal lands and prepare and file inspection reports in accordance with the approved State Program.

B. State Lands shall, within 15 days of conducting any inspection on Federal lands, file with the Regional Director an inspection report describing (1) the general conditions of the lands under the lease, permit, or license; (2) the manner in which the operations are being conducted; and (3) whether the operator is complying with applicable performance and reclamation requirements.

C. State Lands will be the point of contact and sole inspection authority in dealing with the operator concerning operations and compliance with requirements covered by this Agreement, except as described in this Agreement and in the Secretary's regulations. Nothing in this Agreement shall prevent inspections by authorized Federal or State agencies for purposes other than those covered by this Agreement.

D. The Department may conduct any inspections necessary to comply with 30 CFR Part 842 and its obligation under laws other than the Act.

E. The Regional Director shall give State Lands reasonable notice of his intent to conduct an inspection in order to provide State inspectors with an opportunity to join in the inspection. When Interior is responding to a citizen complaint of an imminent environmental danger or a threat to human health, pursuant to 30 CFR 842.11(b)(1)(ii)(C), it will contact the State no less than 24 hours prior to the Federal inspection, if practicable, to facilitate a joint Federal/State inspection. The Secretary reserves the right to conduct inspections without prior notice to State Lands if necessary to carry out his responsibilities under the Federal Act.

F. Personnel of the State and Interior shall be mutually available to serve as witnesses in enforcement actions taken by either party.

Article VII: Enforcement

A. State Lands shall take enforcement action on Federal lands in accordance with the State program and this Agreement.

B. During any joint inspection by Interior and State Lands, State Lands shall take enforcement action, including issuance of orders of cessation and notices of violation. Interior and State Lands shall consult prior to issuance of any decision to suspend or revoke a permit.

C. State Lands and OSM shall promptly notify each other of all violations of applicable laws, regulations, orders, approved mining and reclamation plans and permits subject to this Agreement and of all actions taken with respect to such violations.

D. This Agreement does not limit the Secretary's authority to enforce violations of Federal law or conditions of a permit.

Article VIII: Bonds

A. State Lands and the Regional Director shall require all operators on Federal lands to submit a single bond to cover the operator's responsibilities under the Federal Act and the State Program, payable to both the United States and State Lands. The bond shall be of sufficient amount to comply with the requirements of both State and Federal law, and release of the bond shall be conditioned upon compliance with all applicable requirements.

B. Prior to releasing the operator from an obligation required under the State Program under the bond for any Federal lands, State Lands shall obtain the consent of the Regional Director. State Lands shall also advise the Regional Director of adjustments to the bond.

Article IX: Designation of Lands as Unsuitable

A. State Lands and the Regional Director shall cooperate with each other in the review and processing of petitions to designate lands as unsuitable for surface coal mining operations. When either agency receives a petition that could impact adjacent Federal or non-Federal lands, respectively, the agency shall (1) notify the other of its receipt and of the anticipated schedule for reaching a decision; and (2) request and fully consider data, information and views of the other.

B. The authority to designate Federal lands as unsuitable for mining is reserved to the Secretary or his designated representative. Petitions for designation shall be filed with the Regional Director and processed in accordance with 30 CFR Part 769.

Article X: Termination of Cooperative Agreement

This Agreement may be terminated by the State or the Secretary under the provisions of 30 CFR 745.15.

Article XI: Reinstatement of Cooperative Agreement

If this Agreement has been terminated in whole or part, it may be reinstated under the provisions of 30 CFR 745.16.

Article XII: Amendments of Cooperative Agreement

This Agreement may be amended by mutual agreement of Governor and Secretary in accordance with 30 CFR 745.14.

Article XIII: Changes in State or Federal Standards

A. Interior or the State may from time to time revise and promulgate new or revised performance or reclamation requirements or enforcement and administrative procedures. Interior and the State shall immediately inform each other of any proposed or final changes in their respective laws or regulations as provided in 30 CFR 732.17. Each party shall, if it determines it to be necessary to keep this Agreement in force, change or revise its respective laws or regulations. For changes which may be accomplished by rulemaking, each party shall have six months in which to make such changes, unless mutually extended. For changes which require legislative authorization, the State shall have until the close of its next regular legislative session in which to make the changes.

B. The State and Interior shall provide each other with copies of any changes to their respective laws, rules, regulations, and standards pertaining to the enforcement and administration of this Agreement.

Article XIV: Changes in Personnel and Organization

The State and Interior shall, consistent with 30 CFR Part 745, advise each other of changes in the organization, structure, functions, duties and funds of the offices, departments, divisions and persons within their organizations which could affect administration and enforcement of this Agreement. Each shall promptly advise the other in writing of changes in key personnel, including the heads of a department or division, or changes in the functions or duties of persons occupying the principal offices within the structure of the program. The State and Interior shall advise each other in writing of changes in the location of offices, addresses, telephone number, and changes in the names, location, and telephone numbers of their respective mine inspectors and the area within the State for which such inspectors are responsible.

Article XV: Reservation of Rights

In accordance with 30 CFR 745.13, this Agreement shall not be construed as waiving or preventing the assertion of any rights that have not been expressly addressed in this Agreement that the State or the Secretary may have under other laws and regulations, including the Mineral Leasing Act, as amended, the Mineral Leasing Act for Acquired Lands, the Stockraising Homestead Act, the Surface Mining Control and Reclamation Act of 1977, the Federal Land Policy Management Act, the Constitution of the United States, the Constitution of the State, or State laws.

Article XVI: Definitions

Terms and phrases used in this Agreement which are defined in 30 CFR Parts 700 and 701 shall be given the meanings set forth in said definitions.

Dated: February 6, 1981.

Ted Schwinden,
Governor of Montana.

Dated: January 19, 1981.

James A. Joseph,
Secretary of the Interior.

(Pub. L. 95-87, sec. 523(c), (30 U.S.C. 1273(c)))

[46 FR 20993, Apr. 8, 1981]

PART 931—NEW MEXICO

Sec.
931.1 Scope.
931.10 State Regulatory program approval.
931.11 Conditions of the State program approval.
931.12 New Mexico regulations affirmatively disapproved in accordance with court order.
931.13 Preemption of New Mexico laws and regulations.
931.15 Approval of amendments to State regulatory program.
931.16 Required program amendments.
931.20 Approval of the New Mexico abandoned mine reclamation plan.
931.30 State-Federal cooperative agreement.

AUTHORITY: Sec. 503, Pub. L. 95-87, 91 Stat. 470 (30 U.S.C. 1253).

SOURCE: 45 FR 86489, Dec. 31, 1980, unless otherwise noted.

§ 931.1 Scope.

This part contains all rules applicable only within New Mexico that have been adopted under the Surface Mining Control and Reclamation Act of 1977.

§ 931.10 State Regulatory program approval.

The New Mexico State Program as submitted on February 28, 1980, and amended and clarified on June 11, 1980, August 7, 1980, and September 10, 1980, was conditionally approved, effective December 31, 1980. Copies of the approved program together with copies of the letter of the New Mexico Energy and Minerals Department, Division of Mining and Minerals, agreeing to the conditions in 30 CFR 931.11 are available at:

(a) Energy and Minerals Department, Mining and Minerals Division, 525 Camino de los Marquez, Sante Fe, New Mexico 87501.

(b) Office of Surface Mining Reclamation and Enforcement, 219 Central Avenue, N.W., Albuquerque, New Mexico 87102.

(c) Office of Surface Mining Reclamation and Enforcement, Administrative Record Room, 1100 L Street, N.W., Washington, D.C. 20240.

(30 U.S.C. 1201, *et seq.*)

[47 FR 47380, Oct. 26, 1982]

§ 931.11 Conditions of the State program approval.

The approval of the State program is subject to the following conditions:

(a)—(d) [Reserved]

(e) The approval found in § 931.10 will terminate on March 15, 1983, unless New Mexico submits to the Secretary by that date copies of fully implemented regulations containing provisions which are the same or similar to those in 43 CFR 4.1290—4.1296, relating to the award of costs, including attorney's fees, in administrative proceedings, or otherwise amends its program to accomplish the same result.

(f)—(j) [Reserved]

(30 U.S.C. 1201, *et seq.*)

[45 FR 86489, Dec. 31, 1980, as amended at 47 FR 23153, 23155, May 27, 1982; 47 FR 47380, Oct. 26, 1982; 48 FR 28088, June 20, 1983; 49 FR 30691, Aug. 1, 1984]

§ 931.12 New Mexico regulations affirmatively disapproved in accordance with court order.

The following provisions referred to in paragraphs (a)-(o) of this section of the New Mexico permanent regulatory program submission are hereby disapproved to the extent indicated in compliance with the February 26, 1980, May 16, 1980, and August 15, 1980 opinions and orders of the U.S. District Court for the District of Columbia in *In Re: Permanent Surface Mining Regulation Litigation* (Civil Action No. 79-1144).

(a) The definition of "mine plan area" in New Mexico regulation 1-5 is disapproved, as is the term "mine plan area" in New Mexico regulation 8-22(b) in accordance with the court's remand of the corresponding provisions in the permanent program regulations.

(b) The definition of "road" in New Mexico regulation 1-5 is disapproved in accordance with the court's remand of the corresponding provision in the permanent program regulations.

(c) New Mexico regulations 2-11(a) and 2-12(e)(1) are disapproved to the extent to which they apply to privately owned places listed on the National Register of Historic Places. The language "or a statutory or regulatory responsibility for" in 2-12(e)(1) is also disapproved. These disapprovals conform to the corresponding suspensions of 30 CFR 761.11(c) and 12(f)(1).

(d) New Mexico regulations 6-11(b) (3) and (6) which require submission of a map and an explanation of the basis for an exploration on another's lands are disapproved in accordance with the court's remand of 30 CFR 776.11(b) (3) and (5).

(e) New Mexico regulations 8-20 (a)—(c) and 9-16 (a) and (b), requiring the submission of certain fish and wildlife information by a permit applicant, are disapproved in accordance with the court's remand of 30 CFR 779.20, 780.16, 783.20 and 784.21.

(f) New Mexico regulations 8-21(a)—(c) are disapproved to the extent to which they require soil survey information on lands on which reconnaissance does not suggest a finding of prime farmlands, in accordance with the court's remand of 30 CFR 779.21 and 783.21.

(g) New Mexico regulation 8-14(a)-(b) is disapproved insofar as it requires geological description of the strata down to and immediately below any coal seam for areas to be affected only by surface operations and facilities where no removal of overburden down to the level of the coal seam will occur, in accordance with the suspension of 30 CFR 783.14(a)(1).

(h) New Mexico regulation 8-25(c), (h) and (i), which requires cross sections, maps and plans, is disapproved in accordance with the court's remand of 30 CFR 783.25 (c), (h) and (i).

(i) New Mexico regulation 10-19(c)(i)(ii) is disapproved to the extent to which it fails to specify negligible farmland interruptions and undeveloped range lands as exclusions from its hydrological requirements dealing with alluvial valley floors, in accordance with the court's remand of 30 CFR 785.19(e)(1)(ii).

(j) New Mexico regulation 17-11(e) is disapproved to the extent to which it fails to provide for citizen access to the mine site in conjunction with an informal conference concerning release of the performance bond, in accordance with the court's remand of 30 CFR 807.11(e).

(k) New Mexico regulation 20-42 (1) and (8) is disapproved to the extent to which it requires runoff from reclaimed land to meet the same effluent limitation as that for actively mined land, in accordance with the court's remand of 30 CFR 816.42 (a) (1) and (7).

(l) New Mexico regulations 20-52(a)(1) and 20-54, dealing with water monitoring and replacement of water, are disapproved insofar as they apply to underground mining operations, in accordance with the court's remand of 30 CFR 817.52(a)(1) and 817.54.

(m) New Mexico regulation 20-95, which requires measures for the control of fugitive dust, is disapproved in accordance with the court's remand of 30 CFR 816.95 and 817.95 for containing measures not specifically related to controlling only that air pollution associated with erosion.

(n) New Mexico regulations 20-150 through 20-176, relating to regulation of roads, are disapproved in accordance with the court's remand of 30 CFR 816.150 through 816.176.

(o) The civil penalty assessment procedures contained in New Mexico regulation 31 is disapproved to the extent they incorporate a point system in accordance with the court's remand of 30 CFR 732.15(b)(7) and 30 CFR 840.13(a).

(p) The following provisions of the New Mexico permanent regulatory program are hereby disapproved: Sections 14-23(a) and 14-23(b) of the New Mexico regulations are disapproved to the extent that the phrase in the first sentence of each section states, "or a separate guarantor."

(Pub. L. 95-87, Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*))

[45 FR 86489, Dec. 31, 1980, as amended at 49 FR 30691, Aug. 1, 1984]

§ 931.13 Preemption of New Mexico laws and regulations.

Under the authority of sections 505(b) of SMCRA, 30 U.S.C. 1255(b), and in accordance with the position taken by the State of New Mexico, the following provisions of New Mexico law and regulation are hereby preempted and superseded as they may apply to coal exploration and surface coal mining and reclamation operations:

The State Wildlife Conservation Act (17-2-37 to 17-2-46 NMSA 1978) to the extent it is inconsistent with provisions of SMCRA related to the Endangered Species Act of 1973 (16 USC 1531 *et seq.*).

§ 931.15 Approval of amendments to State regulatory program.

(a) The following amendment was approved effective May 27, 1982:

Procedures for Posting and Publishing Notices of Show Cause Orders dated February 19, 1982.

(b) The following amendments are approved effective October 26, 1982.

(1) New Mexico revised regulation 20-71(i) adopted July 9, 1982.

(2) New Mexico revised regulation 19-15(d) adopted July 9, 1982.

(3) New Mexico revised regulation 20-102(a) adopted July 9, 1982.

(4) New Mexico revised regulatory definition of "Unconsolidated Streamlaid Deposits Holding Streams" adopted July 9, 1982.

(5) New Mexico revised regulation 29-12(b) adopted July 9, 1982.

(c) The following amendments are approved effective August 1, 1984: Revisions to the New Mexico Surface Coal Mining Regulations submitted February 8, 1984: repealing Parts 14, 15, 16, 17 and 18 of Chapter J Bond and Insurance Requirements; withdrawing certain related definitions in Part 1 of Chapter A of Rule 80-1; adding certain other related definitions to Part 1 of Chapter A; adding a new Chapter J Bond and Insurance Requirements to Rule 80-1 consisting of Part 14, with the exception of the phrase "or a separate guarantor" which appears in new Chapter J of 80-1 at sections 14-23(a) and 14-23(b); and, amending the index to Rule 80-1 to reflect the contents of Chapter J.

(d) The following amendment is approved effective January 4, 1985: New Mexico's revised definition of "road" as contained in New Mexico Coal Surface Mining Commission (CSMC) Rule 80-1-1-5, the general road requirements at CSMC 80-1-20-150, the primary road requirements at CSMC 80-1-20-151, and the revised Table of Contents reflecting these changes, all as submitted on June 6, 1984, and corrected on October 1, 1984.

(e) The following amendments are approved effective January 31, 1985: New Mexico Coal Surface Mining Commission rules 80-1-1-11, 80-1-11-30 and 80-1-20-103, as submitted on June 20 and July 18, 1984.

(30 U.S.C. 1201, *et seq.*)

[47 FR 47380, Oct. 26, 1982, as amended at 49 FR 30691, Aug. 1, 1984; 50 FR 458, Jan. 4, 1985; 50 FR 4508, Jan. 31, 1985]

§ 931.16 Required program amendments.

Pursuant to 30 CFR 732.17, New Mexico is required to submit for OSM's approval the following proposed amendment by the dates specified.

(a) By March 4, 1986, New Mexico shall submit for OSM's approval:

(1) Rules governing the training, examination and certification of blasters, and

(2) A program to examine and certify all persons who are directly responsible for the use of explosives in surface coal mining operations.

(b) [Reserved]

[50 FR 19357, May 8, 1985]

§ 931.20 Approval of the New Mexico Abandoned Mine Reclamation Plan.

The New Mexico Abandoned Mine Reclamation Plan as submitted on September 29, 1980, and amended February 4, 1981, is approved. Copies of the approved program are available at the following locations:

Office of Surface Mining Reclamation and Enforcement, Region V, Brooks Towers, 1020 15th Street, Denver, Colorado 80202;
New Mexico Department of Energy and Minerals, Mining and Minerals Division, 1222 Luisa Street, Santa Fe, New Mexico 87501;
Office of Surface Mining Reclamation and Enforcement, Room 153, 1951 Constitution Avenue NW., Washington, D.C. 20240.

[46 FR 31641, June 17, 1981]

§ 931.30 State-Federal cooperative agreement.

The State of New Mexico (State) acting through the Governor and the Department of the Interior (Department) acting through the Secretary enter into a Cooperative Agreement (Agreement) to read as follows:

Article I: Introduction and Purpose

1. This Agreement is authorized by section 523(c) of the Surface Mining Control and Reclamation Act (Federal Act), 30 U.S.C. 1273(c), which allows a State with a permanent regulatory program approved under 30 U.S.C. 1253 to elect to enter into an agreement with the Secretary for the regulation and control of surface coal mining and reclamation operations on Federal lands and by section 69-25A-27 NMSA 1978 of the Surface Mining Act (State Act).

The Agreement provides for State regulation of surface coal mining and reclamation operations on Federal lands within the State consistent with the State and Federal Acts, the State program (Program) (30 CFR Part 931) and the Federal Lands Program (30 CFR Parts 740-745). The term "Federal lands" is defined in the Federal Act and State and Federal regulations.

2. The purpose of this Agreement is to (a) foster State-Federal cooperation in the regulation of surface coal mining and reclamation operations; (b) eliminate intergovernmental overlap and duplication; and (c) provide uniformity by effective application of the State program to Federal lands in New Mexico.

Article II: Effective Date

3. This Cooperative Agreement is effective following signing by the Secretary and the Governor, and upon publication as a final rule in the FEDERAL REGISTER. This Agreement shall remain in effect until terminated as provided in Article XII.

Article III: Scope

4. This Agreement makes the laws, regulations, terms and conditions of the Program conditionally approved effective December 31, 1980 (30 CFR Part 931), or as hereinafter amended in accordance with 30 CFR 732.17, applicable to Federal lands within the State except as otherwise stated in this Agreement, the Federal Act, 30 CFR Part 745 or other applicable Federal laws. Orders and decisions issued in accordance with the Program by the Mining and Minerals Division (Mining and Minerals) of the New Mexico Energy and Minerals Department that are appealable shall be appealed to the State reviewing authority. Orders and decisions issued by the Department that are appealable shall be appealed to the Department of the Interior's Office of Hearings and Appeals.

Article IV: Responsibilities

5. Mining and Minerals is and shall continue to be the sole agency responsible for administering this cooperative agreement on behalf of the Governor on Federal lands throughout the State. Mining and Minerals

has and shall continue to have authority under State law to carry out this Agreement. The Office of Surface Mining (OSM) of the Department of the Interior shall administer this Agreement of behalf of the Secretary in accordance with the regulations in 30 CFR Chapter VII.

6. To eliminate duplication and overlap, the State will assume the primary responsibility for the review and analysis of permit applications and applications for permit revisions or renewals, subject to legal restrictions, including those limitations in 30 U.S.C. 1272(b) and 1273 and in 42 U.S.C. 4321-4335. The State shall have the necessary personnel to fully implement this Agreement in accordance with the provisions of the Federal Act and the Program.

Article V: Funding

7. The State will devote adequate funds to the administration and enforcement of this Agreement of Federal lands within the State. If this Agreement has been carried out, and subject to appropriations, the Department shall provide the State with funds to defay the costs associated with carrying out responsibilities under this Agreement, as provided in 30 U.S.C. 1295(c) and 30 CFR 735.16. Reimbursement shall be in the form of annual grants, and applications for said grants shall be processed and awarded in a timely and prompt manner.

If sufficient funds have not been appropriated to OSM, OSM and Mining and Minerals shall promptly meet to decide on appropriate measures that will insure that mining operations are regulated in accordance with the Program.

Funds provided to the State shall be adjusted in accordance with Office of Management and Budget (OMB) Circular A-102, Attachment E.

Article VI: Reports, Fees and Equipment

8. Mining and Minerals shall make annual reports to OSM containing information respecting its compliance with the terms of this Agreement pursuant to 30 CFR 745.12(c). The State and OSM shall exchange, upon request, except where prohibited by Federal law, information developed under this Agreement. OSM shall provide Mining and Minerals with a copy of any final evaluation report prepared concerning State administration and enforcement of this Agreement.

9. The amount of the fee accompanying an application for a permit shall be determined in accordance with New Mexico Coal Surface Mining Commission Rule 80-1, Part 5-25. All permit fees shall be retained by the State and deposited with the State Treasurer in the Oil and Gas Conservation Fund. The Financial Status Report submitted pursuant to 30 CFR 735.26 shall include a report of the amount of fees collected during the prior State fiscal year.

10. Mining and Minerals will assure itself access to equipment, laboratories and facilities with which all inspections, investigations, studies, tests and analyses can be performed, and which are necessary to carry out the requirements of this Agreement.

Article VII: Permit Application Package

11. Mining and Minerals and OSM shall require an operator on Federal lands to submit a permit application package or an application for a permit revision or renewal in an appropriate number of copies to Mining and Minerals. Any documentation or information submitted by the operator for the sole purpose of complying with the 3-year requirement of section 7(c) of the Mineral Leasing Act of 1920, 30 U.S.C. 181 *et seq.*, will be forwarded to the Minerals Management Service (MMS). If such documentation is submitted as part of a permit application package, a copy of the entire package will be forwarded to MMS.

The permit application package or application for a permit revision or renewal shall be in the form required by Mining and Minerals, shall satisfy the requirements of 30 CFR 741.12(b) and 30 CFR 741.13, and shall include the information required by, or necessary for, Mining and Minerals and the Secretary to make a determination of compliance with:

(a) Section 69-25A-1, *et seq.*, NMSA 1978;

(b) New Mexico Coal Surface Mining Commission Rule 80-1;

(c) Applicable terms and conditions of the Federal coal lease;

(d) Applicable requirements of the 30 CFR Part 211 regulations pertaining to the Mineral Leasing Act requirements; and

(e) Applicable requirements of the approved Program and other Federal laws including, but not limited to, those identified in 30 CFR Chapter VII, Subchapter D and Appendix A of this Agreement.

12. Mining and Minerals shall assume the primary authority pursuant to sections 510(a) and 523(c) of the Federal Act for the analysis, review, and approval of the permit application or application for a permit revision or renewal according to the standards of the Program. OSM shall assist Mining and Minerals in the analysis of the permit application or application for a permit revision or renewal according to the procedures set forth in Appendix B. The Department shall concurrently carry out its responsibilities under the Mineral Leasing Act, as amended (MLA), the National Environmental Policy Act (NEPA), and other public laws (including but not limited to those in Appendix A) that cannot, under the Federal Act, be delegated to the State. The Department shall carry out these responsibilities

according to the procedures set forth in Appendix B so as to avoid, to the maximum extent possible, duplication of the responsibilities of the State set forth in this Agreement and the State Program. The Secretary will consider the information in the permit application package and, where appropriate, make the decisions required by the Federal Act, MLA, NEPA and other public laws listed above.

13. Mining and Minerals shall be the primary point of contact with the operator. The Department will independently initiate contacts with the applicant regarding permit application packages or applications for a permit revision or renewal only where necessary to carry out its statutory responsibilities. When such action may generate correspondence with the applicant, a copy of all correspondence with the applicant that may have a bearing on decisions regarding the mining operation shall be sent to Mining and Minerals.

14. Mining and Minerals shall maintain a file of all original correspondence with the applicant and any information received from the applicant which may have a bearing on decisions regarding the permit application package or application for a permit revision or renewal. At the request of the Secretary or his designated agents, Mining and Minerals shall make available the Mining and Minerals files and send copies of such correspondence and information when requested to do so.

15. To the fullest extent allowed by State and Federal law, OSM and Mining and Minerals shall cooperate so that duplication will be eliminated in conducting the review and analysis of the permit application package or application for a permit revision or renewal.

16. Mining and Minerals will review the permit application or application for a permit revision or renewal under sections 11-11 through 11-29 of the New Mexico Coal Surface Mining Commission Rule 80-1.

Article VIII: Inspections

17. Mining and Minerals shall conduct inspections on Federal lands and prepare and file inspection reports in accordance with its Program.

18. Mining and Minerals shall, subsequent to conducting any inspection on Federal lands, file with OSM on a timely basis, an inspection report adequately describing (1) the general conditions of the lands; (2) the manner in which the operations are being conducted; and (3) whether the operator is complying with applicable performance and reclamation requirements.

19. Mining and Minerals will be the point of contact and primary inspection authority in dealing with the operator concerning operations and compliance with the requirements covered by this Agreement, except as described hereinafter. Nothing in this Agreement shall prevent inspections by authorized Federal agencies for purposes other than those covered by this Agreement.

20. The Department may conduct any inspections necessary to comply with 30 CFR Parts 842 and 743.

21. Except as provided below, the Secretary shall give Mining and Minerals reasonable notice of his intent to conduct an inspection in order to provide State inspectors an opportunity to join in the inspection. The Secretary reserves the right to conduct inspections without prior notice to Mining and Minerals to carry out his responsibilities under the Federal Act.

Article IX: Enforcement

22. Mining and Minerals shall be the primary enforcement authority under the Federal Act concerning compliance with the requirements of this Agreement and the Program. Enforcement authority of the Secretary under other laws and orders including, but not limited to, those listed in Appendix A is reserved to the Secretary.

23. During any joint inspection by OSM and Mining and Minerals, Mining and Minerals shall have primary responsibility for enforcement procedures, including issuance of orders of cessation, notices of violation and assessment of penalties. OSM and Mining and Minerals shall consult prior to issuance of any decision to suspend or revoke a permit.

24. Mining and Minerals and OSM shall promptly notify each other of all violations of applicable laws, regulations, orders, approved mining plans and permits subject to this Agreement and of all actions taken with respect to such violations.

25. During any inspection made solely by OSM or any joint inspection where Mining and Minerals and OSM fail to agree regarding the propriety of any particular enforcement action, OSM may take any enforcement action necessary to comply with 30 CFR Parts 843 and 845.

Such enforcement action shall be based on the performance standards included in the regulations of the Program, and the procedures and penalty system contained in 30 CFR Parts 843 and 845. This Agreement does not limit the Department's authority to enforce violations of standards and requirements of Federal laws other than the Federal Act.

26. Personnel of the State and the Department shall be mutually available to serve as witnesses in enforcement actions taken by either party.

Article X: Bonds

27. For all surface coal mines on Federal lands, Mining and Minerals and the Secretary shall require all operators to submit a single performance bond to cover the operator's responsibilities under the Federal Act and the Program, payable to the State, and if required by Federal regulations in Subchapter D, the United States. The performance bond shall be of sufficient amount to comply with the requirements of both State and Federal law and release of the bond shall be conditioned upon compliance with all applicable State and Federal requirements. If the cooperative agreement is terminated, the bonds will revert to being payable only to the United States to the extent that Federal lands are involved. Submission of a performance bond does not satisfy the requirements for a Federal lease bond required by 43 CFR 3474 or a lessee protection bond required in addition to a performance bond, in certain circumstances, by section 715 of the Federal Act.

28. Prior to releasing the operator from an obligation under the performance bond required by the Program for any Federal lands, Mining and Minerals shall obtain the consent of OSM. Mining and Minerals shall also advise OSM of adjustments to the performance bond.

29. The operator's performance bond shall be subject to forfeiture with the consent of the Department, in accordance with the procedures and requirements of the Program.

Article XI: Designating Land Areas Unsuitable for All or Certain Types of Surface Coal Mining

30. Mining and Minerals and the Director shall cooperate with each other in the review and processing of petitions to designate lands as unsuitable for surface coal mining operations. When either agency receives a petition that could impact adjacent Federal or non-Federal lands, the agency receiving the petition shall (1) notify the other of receipt and of the anticipated scheduled for reaching a decision; and (2) request and fully consider data, information and the views of the other.

The authority to designate State and private lands as unsuitable for mining is reserved to the State. The authority to designate Federal lands as unsuitable for mining is reserved to the Secretary or his designated representative.

Article XII: Termination of Cooperative Agreement

31. This Agreement may be terminated by the State or the Department under the provisions of 30 CFR 745.15.

Article XIII: Reinstatement of Cooperative Agreement

32. If this Agreement has been terminated in whole or in part it may be reinstated under the provisions of 30 CFR 745.16.

Article XIV: Amendments of Cooperative Agreement

33. This Agreement may be amended by mutual agreement of the State and the Department. An amendment proposed by one party shall be submitted to the other with a statement of the reasons for such proposed amendment. The amendment shall be adopted after Federal rulemaking in accordance with 30 CFR 745.11. The party to whom the proposed amendment is submitted shall signify its acceptance or rejection of the proposed amendment, and if rejected shall state the reasons for rejection.

Article XV: Changes in State or Federal Standards

34. The Department or the State may from time to time promulgate new or revised performance or reclamation requirements or enforcement and administration procedures. Each party shall, it it determines it to be necessary to keep this Agreement in force, change or revise its regulations and request necessary legislative action. Such changes shall be made under the procedures of 30 CFR Part 732 for changes to the State Program, and under the procedures of section 501 of the Federal Act for changes to the Federal Lands Program.

35. The State and the Department shall provide each other with copies of any changes to their respective laws, rules, regulations and standards pertaining to the enforcement and administration of this Agreement.

Article XVI: Changes in Personnel and Organization

36. The State and the Department shall, consistent with 30 CFR 745.12, advise each other of changes in the organization, structure, functions, duties and funds of the offices, departments, divisions and persons within their organizations. Each shall promptly advise the other in writing of changes in key personnel, including the head of a department or division, or changes in the functions or duties of persons occupying the principal offices within the structure of the Program. The State and the Department shall advise each other in writing of changes in the location of offices, addresses, telephone numbers and changes in the names, locations and telephone numbers of their respective mine inspectors and the area within the State for which such inspectors are responsible.

Article XVII: Definitions

37. Terms and phrases used in this Agreement which are defined in the Federal Act, 30 CFR 700, 701, and 740, and defined in the New Mexico Surface Mining Act (69-25A-1, *et seq.*, NMSA 1978) and the rules and regulations promulgated pursuant to that Act, shall be given the meanings set forth in said definitions. Where there is a conflict between the above referenced State and Federal definitions, the definitions used in the approved Program will apply, except in the case of a term which defines the Secretary's remaining responsibilities under the Federal Act and other laws.

Article XVIII. Reservation of Rights

38. In accordance with 30 CFR 745.13, this Agreement shall not be construed as waiving or preventing the assertion of any rights that have not been expressly addressed in this Agreement that the State or the Secretary may have under other laws or regulations, including but not limited to those listed in Appendix A.

Dated: December 7, 1982.

Bruce King,
Governor of New Mexico.

Dated: November 24, 1982.

James G. Watt,
Secretary of the Interior.

APPENDIX A

1. The Federal Land Policy and Management Act, 43 U.S.C. 1701, *et seq.*, and implementing regulations.
2. The Mineral Leasing Act of 1920, 30 U.S.C. 181, *et seq.*, and implementing regulations including 30 CFR Part 211.
3. The National Environmental Policy Act of 1969, 42 U.S.C. 4321, *et seq.*, and implementing regulations including 40 CFR Part 1500 *et seq.*
4. The Endangered Species Act, 16 U.S.C. 1531 *et seq.*, and implementing regulations including 50 CFR Part 402.
5. The National Historic Preservation Act of 1966, 16 U.S.C. 470 *et seq.*, and implementing regulations including 36 CFR Part 800.
6. The Clean Air Act, 42 U.S.C. 7401, *et seq.*, and implementing regulations.
7. The Federal Water Pollution Control Act, 33 U.S.C. 1251, *et seq.*, and implementing regulations.
8. The Resource Conservation and Recovery Act of 1976, 42 U.S.C. 6901 *et seq.*, and implementing regulations.
9. The Reservoir Salvage Act of 1960, as amended by the Preservation of Historical and Archaeological Data Act of 1974, 16 U.S.C. 469 *et seq.*
10. Executive Order 11593, Cultural Resource Inventories on Federal Lands.
11. Executive Order 11988 for Flood Plain Protection. Executive Order 11990 for Wetlands Protection.
12. The Mineral Leasing Act for Acquired Lands, 30 U.S.C. 351, *et seq.*, and the implementing regulations.
13. The Stock Raising Homestead Act of 1916, 43 U.S.C. 291, *et seq.*
14. The Constitution of the United States.
15. The Constitution of the State and State law.

APPENDIX B—PROCEDURE FOR COOPERATIVE REVIEW OF PERMIT APPLICATION PACKAGES AND APPLICATIONS FOR PERMIT REVISIONS OR RENEWALS FOR FEDERAL COAL MINES IN NEW MEXICO

I: Point of Contact and Coordination During the Review of Permit Application Packages and Applications for Permit Revisions and Renewals

A. The New Mexico Mining and Minerals Division (Mining and Minerals) will:

1. Be the point of contact and coordinate communications with the applicant on issues concerned with the development, review and approval of permit application packages or applications for permit revisions or renewals, except on issues concerned with the requirements of the Mineral Leasing Act of 1920 (MLA), 30 U.S.C. 181, *et seq.*, or National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.*, and the requirements of other Federal laws not addressed in the applications.

2. Communicate with the applicant on issues of concern to the appropriate Federal land management agency (FLMA) and immediately advise FLMA and OSM of such issues and communication.

3. Communicate with the applicant on issues of concern to the Office of Surface Mining (OSM), and immediately advise OSM of such issues and communications.

4. Communicate with the applicant on issues of concern to the Minerals Management Service (MMS) and immediately advise MMS and OSM of such issues and communications as they pertain to the application.

5. Communicate with the applicant on issues of concern to other agencies within the Department of the Interior, as appropriate, and immediately advise such agencies of such issues and communications.

6. Provide OSM with a copy of each apparent completeness review upon completion.

B. MMS will:

1. Receive any documentation required by the 30 CFR Part 211 regulations.

2. Be the point of contact with the applicant on issues concerned exclusively with the 30 CFR Part 211 regulations.

3. Provide Mining and Minerals and OSM with copies of pertinent correspondence.

C. OSM will: Be responsible for ensuring that any information OSM receives which has a bearing on decisions regarding the permit application package or application for a permit revision or renewal is sent promptly to Mining and Minerals.

II: Receipt and Distribution of Permit Application Packages and Applications for Permit Revisions and Renewals

A. Mining and Minerals will:

1. Receive the permit application package, the application for a permit revision or renewal or the correspondence from the applicant and transmit an appropriate number of copies to FLMA, MMS, OSM and other agencies specified by the Secretary after the application has been filed. Such transmittal will include a request for a conference on the submissions, as needed.

2. Identify an application manger responsible for coordinating the review and notify OSM, MMS and FLMA as necessary.

3. Upon receipt of an application, meet with OSM to discuss the application and agree upon a schedule, and, when Mining and Minerals requests assistance, agree upon a work plan with OSM.

B. OSM, MMS and FLMA will: Identify an application manager upon receipt of the application and notify Mining and Minerals of the identity of the application manager.

III: Determination of Completeness

Mining and Minerals will:

1. Determine the completeness of a permit application package or application for a permit revision or renewal.

2. Issue public notice of the availability of complete applications for the public to review in accordance with the public review procedure set forth in New Mexico Coal Surface Mining Commission Rule 80-1, Part 11.

IV: Determination of Preliminary Findings of Substantive Adequacy

A. Mining and Minerals will:

1. Consult with MMS, FLMA, OSM, and other Federal agencies specified by the Secretary to review the filed application for preliminary findings of substantive adequacy (henceforth "preliminary findings") and to assess the need for additional data requirements in their respective areas of responsibility.

2. Arrange meetings and field examinations with the interested parties as necessary to determine the preliminary findings.

3. Advise the applicant of the preliminary findings upon the advice and consent of FLMA, MMS, OSM and other Federal agencies specified by the Secretary.

4. Transmit the letter(s) informing the applicant of the preliminary findings, with copies to FLMA, OSM, MMS and other agencies specified by the Secretary.

5. When requested, furnish the Director with copies of correspondence with the applicant and all information received from the applicant.

B. OSM will:

1. Review the permit application package or application for a permit revision or renewal for preliminary findings and, at the request of Mining and Minerals, provide technical assistance as possible.

2. Furnish Mining and Minerals with preliminary findings within 45 calendar days of receipt of the permit application package or application for a permit revision or renewal and specify any requirements for additional data.

3. No later then 30 days from notification of completeness, initiate NEPA compliance procedures and determine the need for an Environmental Assessment or an Environmental Impact Statement.

4. Publish notices of NEPA documents as required by Federal law and regulations.

5. Participate, as arranged, in meetings and field examinations.

C. FLMA will:

1. Review the permit application package or application for permit revision or renewal for preliminary findings as to whether the applicant's proposed postmining land use is consistent with FLMA's land use plan, and the adequacy of measures to protect Federal resources not covered by the rights granted by the Federal coal lease.

2. Furnish Mining and Minerals with preliminary findings within 45 calendar days of receipt of the permit application package or application for a permit revision or renewal and specify any requirements for additional data.

3. Participate, as arranged, in meetings and field examinations.

D. MMS will:

1. Review the permit application package or application for a permit revision or renewal in regard to MLA requirements.

2. Furnish Mining and Minerals with the preliminary findings within 45 calendar days of receipt of the permit application package or application for a permit revision or renewal and specify any requirements for additional data.

3. Participate, as arranged, in meetings and field examinations.

E. Other agencies specified by the Secretary will:

1. Review the permit application package or application for a permit revision or renewal for preliminary findings in regard to their responsibilities under law.

2. Furnish Mining and Minerals with preliminary findings within 45 calendar days of

receipt of the application and specify any requirements for additional data.

3. Participate, as arranged, in meetings and field examinations.

V: Findings of Technical Adequacy and NEPA Compliance

A. Mining and Minerals will:

1. Develop and coordinate the technical review of permit application packages or applications for a permit revision or renewal. The review will include representatives of Mining and Minerals, MMS, FLMA, OSM and other Federal agencies specified by the Secretary as appropriate.

2. Coordinate with OSM, for the purpose of eliminating duplication, and provide to OSM a complete technical analysis of the permit application or application for permit revision or renewal pursuant to the Federal Act and the Program that will serve as the technical base for an Environmental Assessment (EA) or an Environmental Impact Statement (EIS) as may be required by NEPA for each permit application package or application for a permit revision or renewal.

3. Coordinate with MMS, for the purpose of eliminating duplication, to conduct a technical analysis that will assist MMS in making findings as may be necessary to determine compliance with the MLA.

4. Coordinate with FLMA, for the purpose of eliminating duplication, to conduct a technical analysis of issues regarding postmining land use and the adequacy of measures to protect Federal resources not covered by the rights granted by the Federal coal lease.

5. Coordinate with other agencies specified by the Secretary, for the purpose of eliminating duplication, to conduct technical analyses of issues within their jurisdiction.

B. OSM will:

1. At the request of Mining and Minerals, assist as possible in the review of the permit application package or application for a permit revision or renewal for technical adequacy in a timely manner as set forth by a schedule developed by Mining and Minerals in cooperation with OSM.

2. Take the leadership role for the development of the EA and/or EIS.

C. MMS will:

1. Review the permit application package or application for a permit revision or renewal for compliance with 30 CFR Part 211.

2. Furnish Mining and Minerals, through OSM, findings on compliance with 30 CFR Part 211 in a timely manner as set forth by a schedule developed by Mining and Minerals in cooperation with MMS.

3. Participate, as arranged, in meetings and field examinations.

D. FLMA will:

1. Determine whether the permit application package or application for a permit revision or renewal provides for postmining land use consistent with FLMA's land use plan and determine the adequacy of measures to protect Federal resources not covered by the rights granted by the Federal coal lease.

2. Furnish Mining and Minerals, through OSM, its determination on the technical adequacy in a timely manner as set forth by a schedule developed by Mining and Minerals in cooperation with FLMA.

3. Participate, as arranged, in meetings and field examinations.

E. Other agencies specified by the Secretary will:

1. Review the permit application package or application for a permit revision or renewal in regard to their responsibilities under law.

2. Furnish Mining and Minerals, through OSM, findings on compliance with other applicable Federal laws and regulations in a timely manner as set forth by a schedule developed in cooperation with Mining and Minerals.

3. Participate, as arranged, in meetings and field examinations.

VI: Preparation and Transmittal of the Decision Document

A. Mining and Minerals will:

1. Assist OSM in the preparation of the decision document for the permit application package or application for a permit revision or renewal, unless the work plan and schedule agreed upon provide otherwise. Mining and Minerals will provide OSM with:

a. A recommendation on the proposal;

b. A finding of compliance with the Program as approved by the Secretary and the regulations promulgated thereunder, which will consist of an analysis of critical issues raised during the course of the review and the resolution of those issues; and

c. All other specific written findings required under section 69-25A-14, NMSA 1978.

2. Consider the comments of OSM, MMS and FLMA and other appropriate Federal agencies when assisting in the preparation of the decision document.

B. OSM will:

1. Prepare the approved NEPA compliance document.

2. Prepare the decision document with the assistance of Mining and Minerals unless the work plan and schedule agreed upon provide otherwise. The decision document shall contain the following:

a. An analysis of the enviromental impacts of the proposal and alternatives to the proposal, prepared in compliance with NEPA, the Council on Environmental Quality regulations and OSM's NEPA compliance handbook;

b. The determinations and recommendations of FLMA;

c. The memorandum of recommendation from the MMS to the Assistant Secretary of the Interior for Energy and Minerals, with regard to MLA requirements;

d. The incorporation of the comments of other agencies specified by the Secretary, as appropriate; and

e. The relevant information submitted by Mining and Minerals as specified by A.1 of this Article.

3. Transmit the decision document to the Secretary.

C. FLMA will: Provide written concurrence on the final decision document to OSM with regard to postmining land use and the adequacy of measures to protect Federal resources not covered by rights granted by any Federal coal lease.

D. MMS will: Provide written concurrence on the final decision document to OSM with regard to its responsibilities.

E. Other agencies will: Provide written concurrence on the final decision document to OSM with regard to their responsibilities.

VII: Decision and Permit Issuance

A. The Secretary will:

1. Evaluate the analysis, conclusions, and recommendations in the decision document as necessary to determine whether he approves or disapproves.

2. Inform Mining and Minerals immediately of his decision. Where the Secretary decides not to approve, the reasons for not approving, and recommendations for remedy shall be specified.

B. Mining and Minerals will:

1. Issue the permit, revised permit, or permit renewal for surface coal mining and reclamation operations after making a finding of compliance with the approved Program in the manner set forth in this Agreement.

2. Advise the operator, in the permit, of the necessity of obtaining Secretarial approval for those statutory requirements which have not been delegated to the State prior to directly affecting Federal lands and, if necessary, prohibit the operator from directly affecting Federal lands under the permit, revised permit, or permit renewal until after the Secretary's approval of the mining plan has been received.

3. Reserve the right to modify the permit, revised permit or permit renewal to conform with the Secretary's decision if a permit, revised permit, or permit renewal has been issued prior to receipt of the Secretary's decision.

VIII: Resolution of Conflict

A. Every effort will be made to resolve errors, omissions and conflicts on data and data analysis at the State and field level.

B. Areas of disagreement between the State and the Department shall be referred to the Governor and the Secretary for resolution.

(Sec. 523(c) of the Surface Mining Control and Reclamation Act of 1977; Pub. L. 95-87; (30 U.S.C. 1273(c)))

[47 FR 56806, Dec. 20, 1982]

PART 933—NORTH CAROLINA

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933.828 Special performance standards—in situ processing.
933.842 Federal inspections.
933.843 Federal enforcement.
933.845 Civil penalties.
933.955 Certification of blasters.

AUTHORITY: Pub. L. 95-87, The Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201 *et seq.*, 91 Stat. 445.

SOURCE: 48 FR 30302, June 30, 1983, unless otherwise noted.

§ 933.700 North Carolina Federal program.

(a) This part contains all rules that are applicable to surface coal mining operations in North Carolina which have been adopted under the Surface Mining Control and Reclamation Act of 1977.

(b) The rules in this part cross-reference pertinent parts of the permanent program regulations in this chapter. The full text of a rule is in the permanent program rule cited under the relevant section of the North Carolina Federal program.

(c) The rules in this part apply to all surface coal mining operations in North Carolina conducted on non-Federal and non-Indian lands. The rules in Subchapter D of this chapter apply to operations on Federal lands in North Carolina.

(d) The information collection requirements contained in this part do not require approval by the Office of Management and Budget under 44 U.S.C. 3507 because there are fewer than ten respondents annually.

(e) The following provisions of North Carolina laws and regulations provide, where applicable, for more stringent environmental control and regulation of some aspects of surface coal mining operations than do the provisions of the Act and the regulations in this chapter. Therefore, pursuant to section 505(b) of the Act, they shall not be construed to be inconsistent with the Act unless in a particular instance the rules in this chapter are found by OSM to establish more stringent environmental controls.

(1) North Carolina General Statute (NCGS) 74-51, concerning conditions under which a mining permit may be granted, authorized the North Carolina Department of Natural Resources and Community Development to deny a permit for a mining operation which will have a significantly adverse effect on the purposes of a publicly owned park, forest, or recreation area and may condition permit approval on a requirement of visual screening, vegetative or otherwise, so as to screen the view of the operation from public highways, public parks, or residential areas where the Department finds such screening to be feasible and desirable, or determines that such screening measures are either not feasible or not desirable.

(2) North Carolina mining laws and regulations apply to mining operations affecting an area greater than one acre. To the extent that North Carolina mining law and regulations cited in paragraph (f) of this section apply to coal mining operations not regulated by the Surface Mining Control and Reclamation Act, they are not preempted by this Federal program for North Carolina.

(3) North Carolina Dam Safety Law of 1967, North Carolina General Statutes (NCGS) 143-215.23 through 143-215.37.

(4) Geophysical Exploration regulations, Title 15, North Carolina Administrative Code, Subchapter 5C, applies to any coal exploration involving the use of explosives.

(f) The following are North Carolina laws and regulations that generally interfere with the achievement of the purposes and requirements of the Act and are, in accordance with section 504(g) of the Act, preempted and superseded to the extent that they regulate coal exploration or surface coal mining and reclamation operations regulated by the Surface Mining Control and Reclamation Act. Other North Carolina laws may interfere with the achievement of the proposes of goals of the Act in an individual situation, and may be preempted and superseded as they affect a particular coal exploration or surface mining operation by publication of the notice to that effect in the FEDERAL REGISTER.

(1) North Carolina Mining Act of 1971, as amended, NCGS 74-46 through 74-68, except to the extent that the Mining Act is preserved as provided in paragraph (e) of this section.

(2) Title 15, North Carolina Administrative Code, Subchapters 5A, 5B, and 5F Mining and Mineral Resources, except to the extent that those regulations are preserved as provided in paragraph (e) of this section.

(g) The Secretary may grant a limited variance from the performance standards of §§ 933.815 through 933.828 of this part if the applicant for coal exploration approval or a surface mining permit submitted pursuant to §§ 933.770 through 933.788 of this part can demonstrate in the application that: (1) such variance is necessary because of the unique nature of the State's terrain, climate, biological, chemical, or other relevent physical conditions; and (2) that the proposed alternative will achieve equal or greater environmental protection than does the performance requirement from which the variance is requested.

§ 933.701 General.

Sections 700.5, 700.11, 700.12, 700.13, 700.14, 700.15 and Part 701 of this chapter shall apply to surface coal mining and reclamation operations in North Carolina.

§ 933.707 Exemption for Coal Extraction Incident to government-financed highway or other construction.

Part 707 of this chapter, *Exemption for Coal Extraction Incident to Government-Financed Highway or Other Construction*, shall apply to surface coal mining and reclamation operations.

§ 933.761 Areas designated unsuitable for surface coal mining by Act of Congress.

Part 761 of this chapter, *Areas Designated Unsuitable for Coal Mining by Act of Congress*, with the exception of §§ 761.11(c) and 761.12(f)(1), shall apply to surface coal mining and reclamation operations, beginning one year after the effective date of this program. For the purposes of Part 933, the following §§ 761.11(c) and 761.12(f)(1) shall replace the existing §§ 761.11(c) and 761.12(f)(1).

(c) On any lands which will adversely affect any publicly owned park, forest, recreation area, or any places included on, or eligible for listing on, the National Register of Historic Places, unless approved jointly by the regulatory authority and the Federal, State, or local agency with jurisdiction over the park, forest, recreation area, or places;

(f)(1) Where the proposed surface coal mining operation may adversely affect any public park, forest, recreation area, or any places included on, or eligible for listing on, the National Register of Historic Places, the regulatory authority shall transmit to the Federal, State, or local agencies with jurisdiction over, or a statutory or regulatory responsibility for, the park, forest, recreation area, or historic place a copy of the completed permit application containing the following:

(i) A request for that agency's approval or disapproval of the operators;

(ii) A notice to the appropriate agency that it must respond within 30 days from receipt of the request.

§ 933.762 Criteria for designating areas as unsuitable for surface coal mining operations.

Part 762 of this chapter, *Criteria for Designation Areas Unsuitable for Surface Coal Mining Operations*, shall apply to surface coal mining and reclamation operations.

§ 933.764 Process for designating areas unsuitable for surface coal mining operations.

Part 764 of this chapter, *State Processes for Designatng Areas Unsuitable for Surface Coal Mining Operations*, pertaining to petitioning, initial processing, hearing requirements, decisions, data base and inventory systems, public information, and regulatory responsibilities shall apply to surface coal mining and reclamation operations beginning one year after the effective date of this program.

§ 933.770 General requirements for permits and exploration procedures.

(a) Part 770 of this chapter, *General Requirements for Permit System Under State Programs*, shall apply to coal exploration and surface coal mining and reclamation operations.

(b) The Secretary shall coordinate, to the extent practicable, the issuance of the following permits, leases and/or certificates required by the State of North Carolina: Water discharge permit (NCGS 143-215.1); water use permits in a capacity use area (NCGS 143-215.5); an approval of dam construction (NCGS 143-215.108); an air pollution control permit (NCGS 143-215.26, Title 15, North Carolina Administrative Code, Subchapter 2K); air and water quality reporting systems (NCGS 143-215.63—143-215.69); a geophysical exploration permit (Title 15, North Carolina Administrative Code, Subchapter 5C); a development permit for operations in an area of environmental concern designated pursuant to the Coastal Area Management Act (NCGS 113A-100—113A-128); a dredging or filling permit issued by the Department of Natural Resources and Community Development (NCGS 113-229); a permit for dumping of toxic substances (NCGS 14-284.2); compliance with any applicable land use regulations adopted in a soil conservation district (NCGS 139-9); and compliance with any county ordinance regarding explosives (NCGS 153A-128).

(c) No person shall be granted a permit to conduct exploration which results in the removal of more than 250 tons of coal or shall conduct surface coal mining unless that person has acquired all required permits, leases, and/or certificates listed in paragraph (b) of this section.

§ 933.771 General requirements for permits and permit applications.

(a) Part 771 of this chapter, *General Requirements for Permits and Permit Applications*, shall apply to any person who makes application for a permit to conduct surface coal mining and reclamation operations.

(b) A person who wishes to conduct new surface coal mining and reclamation operations or who wishes a revision of his permit shall file a complete application at least 12 months prior to the date upon which permit issuance or revision is desired, and shall pay to the Secretary a permit fee in accordance with § 736.25 of this chapter.

§ 933.776 General requirements for coal exploration.

(a) Part 776 of this chapter, *General Requirements for Coal Exploration*, shall apply to any person who conducts or seeks to conduct coal exploration operations.

(b) OSM shall make every effort to act on an exploration application within 60 days of receipt or such longer time as may be reasonable under the circumstances. If additional time is needed, OSM shall notify the applicant that the application is being reviewed, but that more time is necessary to complete such review, setting forth the reasons and the additional time that is needed.

§ 933.778 Surface mining permit application—Minimum requirements for legal, financial, compliance, and related information.

Part 778 of this chapter, *Surface Mining Permit Applications—Minimum Requirements for Legal, Financial, Compliance, and Related Information*, shall apply to any person who makes application for a permit to conduct surface coal mining and reclamation operations.

§ 933.779 Surface mining permit applications—minimum requirements for information on environmental resources.

Part 779 of this chapter, *Surface Mining Permit Applications*—Minimum Requirements for Information on Environmental Resources, shall apply to any person who makes application to conduct surface coal mining and reclamation operations.

§ 933.780 Surface mining permit applications—minimum requirements for reclamation and operation plan.

Part 780 of this chapter, *Surface Mining Permit Applications—Minimum Requirements for Reclamation and Operation Plan*, shall apply to any person who makes application to conduct surface coal mining and reclamation operations, except that for the purposes of Part 933, the paragraph in § 780.31 shall be replaced by the following two paragraphs:

(a) For any public parks, forest, or recreation areas, or historic places that may be adversely affected by the proposed operations, each plan shall describe the measures to be used to minimize or prevent these impacts and to obtain approval of the regulatory authority and other agencies as required in 30 CFR 761.12(f).

(b) Each application for an operation which will be visible from any public park, public highway, or residential area shall include measures to be taken to screen the operation from the view of public parks, public highways and residential areas, or shall set forth the reasons why such screening measures are either not feasible or not desirable.

§ 933.782 Underground mining permit applications—minimum requirements for legal, financial, compliance, and related information.

Part 782 of this chapter, *Underground Mining Permit Applications—Minimum Requirements for Legal, Financial, Compliance, and Related Information*, shall apply to any person who makes application for a permit to conduct underground coal mining operations.

§ 933.783 Underground mining permit applications—minimum requirements for information on environmental resources.

Part 783 of this chapter, *Underground Mining Permit Applications—Minimum Requirements for Information on Environmental Resources*, shall apply to any person who submits an application to conduct underground coal mining operations.

§ 933.784 Underground mining permit applications—minimum requirements for reclamation and operation plan.

Part 784 of this chapter, *Underground Mining Permit Applications—Minimum Requirements for Reclamation and Operation Plan*, shall apply to any person who makes application to conduct underground coal mining except that for the purposes of Part 933, the paragraph in § 784.17 shall be replaced by the following two paragraphs:

(a) For any public parks, forest, or recreation areas, or historic places that may be adversely affected by the proposed operation, each plan shall describe the measures to be used to minimize or prevent these impacts and to obtain approval of the regulatory authority and other agencies as required in 30 CFR 761.12(f).

(b) Each application for an operation which will be visible from any public park, public highway, or residential area shall include measures to be taken to screen the operation from the view of public parks, public highways and residential areas, or shall set forth the reasons why such screening measures are either not feasible or not desirable.

§ 933.785 Requirements for permits for special categories of mining.

Part 785 of this chapter, *Requirements for Permits for Special Categories of Mining*, shall apply to each person who makes application for a permit to conduct certain categories of surface coal mining and reclamation operations as specified therein.

§ 933.786 Review, public participation, and approval or disapproval of permit applications and permit terms and conditions.

(a) Part 786 of this chapter, *Review, Public Participation, and Approval or Disapproval of Permit Applications and Permit Terms and Conditions*, shall apply to the review of applications made by any person for surface coal mining and reclamation operations.

(b) The Secretary shall provide to the North Carolina Department of Natural Resources and Community Development a copy of each decision to grant or deny a permit application.

§ 933.787 Administrative and judicial review of decisions on permit applications.

Decisions on permit applications shall be subject to administrative and judicial review in accordance with Part 787 of this chapter and sections 520, 525 and 526 of the Act.

§ 933.788 Permit reviews, revisions, and renewals, and transfer, sale, and assignment of rights granted under permits.

Part 788 of this chapter, *Permit Reviews, Revisions, and Renewals, and Transfer, Sale, and Assignment of Rights Granted Under Permits,* shall apply to review, revision, and renewal of permits for surface coal mine operations, and to transfer, sale, and assignment of rights granted under permits.

§ 933.795 Small operator assistance.

Part 795 of this chapter, *Small Operator Assistance,* shall apply to any person making application for assistance under the small operator assistance program.

§ 933.800 General requirements for bonding of surface coal mining and reclamation operations.

Part 800 of this chapter, *General Requirements for Bonding of Surface Coal Mining and Reclamation Operations Under Regulatory Programs,* shall apply to all surface coal mining and reclamation operations.

§ 933.815 Performance standards—coal exploration.

Part 815 of this chapter, *Permanent Program Performance Standards—Coal Exploration,* shall apply to any person conducting coal exploration operations.

§ 933.816 Performance standards—surface mining activities.

Part 816 of this chapter, *Permanent Program Performance Standards—Surface Mining Activities,* shall apply to any person who conducts surface coal mining and reclamation operations.

§ 933.817 Performance standards—underground mining activities.

Part 817 of this chapter, *Permanent Program Performance Standards—Underground Mining Activities,* shall apply to any person who conducts underground coal mining operations.

§ 933.819 Special performance standards—auger mining.

Part 819 of this chapter, *Special Permanent Program Performance Standards—Auger Mining,* shall apply to any person who conducts surface coal mining operations which include auger mining.

§ 933.823 Special performance standards—operations on prime farmland.

Part 823 of this chapter, *Special Permanent Program Performance Standards—Operations on Prime Farmland,* shall apply to any person who conducts surface coal mining and reclamation operations on prime farmlands.

§ 933.824 Special performance standards—mountaintop removal.

Part 824 of this chapter, *Special Permanent Program Performance Standards—Mountaintop Removal,* shall apply to any person who conducts surface coal mining operations constituting mountaintop removal mining.

§ 933.826 Special performance standards—operations on steep slopes.

Part 826 of this chapter, *Special Permanent Program Performance Standards—Operations on Steep Slopes,* shall apply to any person who conducts surface coal mining and reclamation operations on steep slopes.

§ 933.827 Special performance standards—coal processing plants and support facilities not located at or near the minesite or not within the permit area for a mine.

Part 827 of this chapter, *Special Permanent Program Performance Standards—Coal Processing Plants and Support Facilities Not Located at or Near the Minesite or Not Within the Permit Area for a Mine,* shall apply to any person who conducts surface coal mining and reclamation operations which include the operation of coal processing plants and support facilities not located at or near the minesite or not within the permit area for a mine.

§ 933.828 Special performance standards—in situ processing.

Part 828 of this chapter, *Special Permanent Program Performance Standards—In Situ Processing*, shall apply to any person who conducts in situ processing activities.

§ 933.842 Federal inspections.

(a) Part 842 of this chapter, *Federal Inspections*, shall apply to all exploration and surface coal mining and reclamation operations.

(b) OSM will furnish a copy of any inspection report written pursuant to this part to the North Carolina Department of Natural Resources and Community Development upon request.

§ 933.843 Federal enforcement.

(a) Part 843 of this chapter, Federal Enforcement, shall when enforcement action is required for violations on surface coal mining and reclamation operations.

(b) OSM will furnish a copy of each enforcement action and order to show cause issued pursuant to this part to the North Carolina Department of Natural Resources and Community Development upon request.

§ 933.845 Civil penalties.

Part 845 of this chaper, Civil Penalties, shall apply when civil penalties are assessed for violations on surface coal mining and reclamation operations.

§ 933.955 Certification of blasters.

Part 955 of this chapter, *Certification of Blasters in Federal Program States and on Indian Lands*, shall apply to the training, examination and certification of blasters for surface coal mining and reclamation operations.

[51 FR 19462, May 29, 1986]

PART 934—NORTH DAKOTA

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934.10 State program approval.
934.12 State program provisions disapproved.
934.13 State program provisions set aside.
934.15 Approval of amendments to State regulatory program.
934.20 Approval of North Dakota abandoned mine plan.
934.30 State-Federal cooperative agreement.

AUTHORITY: Sec. 503, Pub. L. 95-87 (30 U.S.C. 1253).

SOURCE: 45 FR 82246, Dec. 15, 1980, unless otherwise noted.

§ 934.1 Scope.

This part contains all rules applicable only within North Dakota that have been adopted under the Surface Mining Control and Reclamation Act of 1977.

§ 934.10 State program approval.

The North Dakota State Program, as submitted on February 29, 1980, and amended and clarified on June 12, 1980 and September 9, 1980, is conditionally approved, effective December 15, 1980. Beginning on that date, PSC shall be deemed the regulatory authority in North Dakota for all surface coal mining and reclamation operations and for all exploration operations where more than 250 tons of coal are removed on non-Federal and non-Indian lands and the North Dakota Geological Survey shall be deemed the regulatory authority in North Dakota for all exploration operations where less than 250 tons of coal are removed on non-Federal and non-Indian lands. Only surface mining and reclamation operations on non-Federal and non-Indian lands shall be subject to the provisions of the North Dakota permanent regulatory program. Copies of the approved program, together with copies of the letter of the Public Service Commission agreeing to the conditions in § 934.11, are available at:

(a) North Dakota Public Service Commission, Reclamation Division, State Capitol Building, Bismarck, ND 58505, Telephone: (701) 224-2400.

(b) Office of Surface Mining, Brooks Towers, Room 2115, 1020 15th Street, Denver, CO 80202, Telephone: (303) 837-5421.

(c) Office of Surface Mining, Interior South Building, Room 153, 1951 Constitution Avenue, NW., Washington, DC 20240, Telephone: (202) 343-4728.

§ 934.12 State program provisions disapproved.

The following provisions of the North Dakota permanent regulatory program submission are hereby disapproved to the extent indicated in compliance with the February 26, 1980, May 16, 1980, and August 15, 1980, opinions and orders of the U.S. District Court for the District of Columbia (*In re: Permanent Surface Mining Regulation Litigation* (Civ. Action No. 79-1144)).

(a) NDAC 69-05.2-25-01 is disapproved to the extent that it does not allow negligible farmland interruption and undeveloped range lands as exclusions to the hydrology requirements.

(b) NDAC 69-05.2-16.04(2), relating to effluent standard exemptions during periods of precipitation, is disapproved pending promulgation by the Secretary of new regulations.

(c) NDAC 69-05.2-26-01(2) is disapproved to the extent that it requires an operator on prime farmland to actually return the land to crop production.

(d) NDAC 69-05.2-23-01 is disapproved to the extent that it does not allow restoration of the land to a condition capable of supporting prior-to-mining use or higher use at the operator's option.

§ 934.13 State program provisions set aside.

North Dakota regulation NDAC 69-05.2-27-01 is inconsistent with Federal provisions for permitting and bonding of research projects and is set aside under the provisions of section 505(b) of the Surface Mining Control and Reclamation Act of 1977.

§ 934.15 Approval of amendments to State regulatory program.

(a) Statutory changes adopted in the 1981 Legislative session which modified sections of the North Dakota Century Code (NDCC) as listed below are approved effective February 9, 1983.

(1) *Chapter 38-14.1 North Dakota Century Code (NDCC)—Surface Mining and Reclamation Operations.*

(i) Subsection 5 of section 38-14.1-02 of the NDCC (definition of "extended mining plan"), amended.

(ii) New subsection to section 38-14.1-02 of the NDCC (definition of "performance bond"), added.

(iii) New subsection to section 38-14.1-03 of the NDCC (powers and duties of the Commission), added.

(iv) Subsection 3 of section 38-14.1-07 of the NDCC (mining is prohibited), amended.

(v) Subsection 3 of section 38-14.1-13 of the NDCC (permit application—general requirements), amended.

(vi) Subdivision "u" of Subsection 1 of Section 38-14.1-14 of the NDCC (permit applications—mining and reclamation plans), repealed.

(vii) Subdivision n of subsection 2 of section 38-14.1-14 of the NDCC (permit applications—mining and reclamation plans), repealed.

(viii) Section 38-14.15 of the NDCC (permit applications—extended mining plan), amended.

(ix) Subsection 3 of section 38-14.1-20 of the NDCC (ruling on permit application—timing and content), amended.

(x) Subsection 17 of section 38-14.1-24 of the NDCC (environmental protection performance standards), amended.

(xi) Subsection 18 of section 38-14.1-24 of the NDCC (environmental protection performance standards), amended.

(xii) Subsection 4 of section 38-14.1-30 of the NDCC (administrative review of commission rulings—formal hearings), amended.

(xiii) Section 38-14.1-38 of the NDCC (conflict of interest), amended.

(2) *Chapter 38-12.1 North Dakota Century Code—Coal Exploration Data.*

(i) Subdivision b of section 1 of section 38-12.1-04 of the NDCC (jurisdiction of commission), amended.

(3) *Chapter 38-18 North Dakota Century Code—Surface Owner Protection Act.*

(i) Subsection 3 of section 38-18-05 of the NDCC (definition of "mineral developer"), amended.

(ii) Subsection 6 of section 38-18-05 of the NDCC (definition of "mineral owner"), amended.

(iii) Subsection 10 of section 38-18-05 of the NDCC (definition of "surface owner"), amended.

(iv) Subsection 3 of section 38-18-06 of the NDCC (written notice and consent required before permit to surface mine land may be issued), amended.

(v) Section 38-18-07 of the NDCC (surface damage and disruption payments), amended.

(b) Regulatory changes submitted to OSM July 30, 1982, which added, modified, or deleted the sections or portions of the sections of the North Dakota Administrative Code (NDAC) listed below are approved upon promulgation of the revised rules by the State, provided the rules are adopted in identical form as submitted to OSM:

ARTICLE 69-05.2, SURFACE COAL MINING AND RECLAMATION OPERATIONS

Chapter	
69-05.2-01	General Provisions.
69-05.2-05	Permit Applications—General Requirements.
69-05.2-06	Permit Applications—Requirements for Legal, Financial, Compliance, and Related Information.
69-05.2-07	Permit Applications—Extended Mining Plan—Requirement for Information on Environmental Resources.
69-05.2-08	Permit Applications—Permit Area—Requirements for Information on Environmental Resources.
69-05.2-09	Permit Applications—Permit Area—Requirements for Operation and Reclamation Plans.
69-05.2-10	Permit Applications—Review, Public Participation, Approval or Disapproval.
69-05.2-11	Permit Reviews, Revisions, and Renewals—Transfer, Sale, or Assignment of Rights Granted Under Permits.
69-05.2-12	Performance Bonds—Liability Insurance.
69-05.2-13	Performance Standards—General Requirements.
69-05.2-14	Performance Standards—Casing and Sealing of Drilled Holes.
69-05.2-15	Performance Standards—Suitable Plant Growth Material.
69-05.2-16	Performance Standards—Hydrologic Balance—General Requirements.
69-05.2-17	Performance Standards—Use of Explosives.
69-05.2-19	Performance Standards—Waste Materials.
69-05.2-21	Performance Standards—Backfilling and Grading.
69-05.2-22	Performance Standards—Revegetation.
69-05.2-23	Performance Standards—Postmining Land Use.
69-05.2-26	Performance Standards—Prime Farmland.

(c) The amendment to section 38.12.1-03 of the North Dakota Century Code adopted by North Dakota in the 1981 Legislative session is approved effective November 9, 1983.

(d) The following amendments are approved effective July 19, 1984.

(1) Revision to the North Dakota Statute submitted February 2, 1984 amending section 38-14-1.13(1)(b) and repealing section 69-05.2-05-03 of the North Dakota regulations.

(2) Revision to the North Dakota Statute submitted February 2, 1984, amending section 38-14.1-24(1)(1).

(3) Revision to the North Dakota Statute submitted February 2, 1984, amending section 38-14.1-02(33)(a).

(4) Revision to the North Dakota Statute submitted February 2, 1984, adding sections 38-14.1-04.1, 38-14.1-04.2 and 38-14.1-04.3.

(5) Revisions to the North Dakota regulations submitted February 2, 1984, adding a new section, 69-05.2-09-18.

(6) Revision to the North Dakota regulations submitted February 2, 1984, adding a new section, 69-05.2-13-12.1, 69-05.2-13-12.2, 69-05.2-13-12.3, 69-05.2-13-12.4, 69-05.2-13-12.5, and 69-05.2-13-12.6.

(7) Revisions to the North Dakota regulations submitted February 2, 1984, repealing portions of section 69-05.2-16-04 and adding new language at section 69-05.2-16-04.

(e) The following amendment submitted to OSM on February 27, 1984, is approved effective January 3, 1985: North Dakota's definition of "blaster" and renumbering of the definitions section, as contained in the North Dakota Administrative Code (NDAC) at Section 69-05.2-01-02; the general requirements for the use of explosives at NDAC 69-05.2-17-01; the North

Dakota blaster training, examination and certification program at NDAC 69-05.2-31; and all other items submitted by North Dakota, provided that North Dakota promulgates these regulations in a form identical to the submitted to and reviewed by OSM.

(f) The following amendments to the North Dakota permanent regulatory program submitted to OSMRE on June 18, 1985, are approved effective February 18, 1986.

(1) Modifications to NDCC 38-14.1-04.2 and .3 concerning cultural resources;

(2) Modifications to NDCC 38-14.1-7 concerning valid existing rights;

(3) Modifications to NDCC 38-14.1-10 concerning cultural resources;

(4) Modifications to NDCC 38-14.1-14 concerning permit application requirements;

(5) Modifications to NDCC 38-14.1-21 concerning permit approvals;

(6) Modifications to NDCC 38-14.1-30 concerning administrative review of decisions made by the State Historical Board;

(7) Modifications to NDCC 38-14.1-33 concerning permit revocation;

(8) Modifications to NDAC 69-05.2-10-03 concerning criteria for permit approval;

(9) Modifications to NDAC 69-05.2-06-02 concerning compliance information required of permit applicants;

(10) Modifications to NDAC 69-05.2-06-02 and NDAC 69-05.2-04-01 concerning the date for valid existing rights determinations;

(11) Modifications to NDAC 69-05.2-13-12 concerning performance standards for auger mining operations;

(12) Repeal of NDAC 69-05.2-08-03 concerning cultural resources;

(13) Modifications to NDAC 69-05.2-09-08 concerning operations plans;

(14) Modifications to NDAC 69-05.2-09-02 and NDAC 69-05.2-09-09 concerning the responsibilities of registered land surveyors; and

(15) Modifications to NDAC 69-05.2-16-09 concerning sedimentation ponds.

(30 U.S.C. 1201, *et seq.;* Pub. L. 95-87, 30 U.S.C. 1253)

[48 FR 5916, Feb. 9, 1983, as amended at 48 FR 51459, Nov. 9, 1983; 49 FR 29215, July 19, 1984; 50 FR 262, Jan. 3, 1985; 51 FR 5711, Feb. 18, 1986]

§ 934.20 Approval of North Dakota Abandoned Mine Plan.

The North Dakota Abandoned Mine Plan, as submitted on July 28, 1981, is approved. Amendments to this Plan, as submitted on March 4, 1983, are also approved. Copies of the approved programs, as amended, are available at:

North Dakota Public Service Commission, State Capitol Building, Bismarck, North Dakota 58505

Office of Surface Mining Reclamation and Enforcement, P.O. Box 1420, 935 Pendell Blvd., Mills, Wyoming 82644

Office of Surface Mining Reclamation and Enforcement, Administrative Record—Room 5315, 1100 "L" Street, NW., Washington, D.C. 20240

(30 U.S.C. 1201, *et seq.*)

[48 FR 28987, June 24, 1983]

§ 934.30 State-Federal Cooperative Agreement.

COOPERATIVE AGREEMENT

This is a Cooperative Agreement (Agreement) between North Dakota (State) acting by and through the North Dakota Public Service Commission (Commission) and the Governor, and the United States Department of the Interior (Interior), acting by and through the Secretary of the Interior (Secretary) and the Office of Surface Mining (OSM).

Article I: Introduction and Purpose

A. *Authority:* This Agreement is authorized by section 523(c) of the Surface Mining Control and Reclamation Act (Federal Act), Pub. L. 95-87, 30 U.S.C. 1273(c), which allows a State with a permanent regulatory program approved under 30 U.S.C. 1253 to elect to enter into an Agreement for the regulation and control of surface coal mining on Federal lands, and by Chapter 38-14.1 of the North Dakota Century Code, Reclamation of Surface Mined Lands (State Act). This Agreement provides for State regulation of surface coal mining and reclamation operations on Federal lands within North Dakota consistent with the State and Federal Acts and the Federal lands program (section 523(a) of the Federal Act and 30 CFR Chapter VII, Subchapter D).

B. *Purpose:* The purpose of the Agreement is to: (1) Foster State-Federal cooperation in the regulation of surface coal mining and reclamation operations; (2) eliminate unnecessary intergovernmental overlap and duplication; and (3) provide uniform and effective application of the State Program on all non-Indian lands in North Dakota.

Article II: Effective Date

Following signing by the Secretary, the Governor, and the Commission, the Agreement shall take effect upon publication in the FEDERAL REGISTER as a final rule. This Agreement shall remain in effect until terminated as provided in Article X.

Article III: Scope

In accordance with the Federal lands program in 30 CFR Parts 740-746, the laws, rules, terms, and conditions of North Dakota's Permanent State Program (Program) (conditionally approved effective December 15, 1980, 30 CFR 934.11 or as hereinafter amended in accordance with 30 CFR 732.17) are applicable to Federal lands within North Dakota except as otherwise stated in this Agreement, the Federal Act, 30 CFR 745.13, or other applicable laws or rules and regulations. Orders and decisions issued by the Commission in accordance with the State Program that are reviewable shall be reviewed pursuant to section 38-14.1-30 of the North Dakota Century Code. Orders and decisions issued by the Department that are appealable shall be appealed to the Department of the Interior's Office of Hearings and Appeals.

Article IV: Requirements for Cooperative Agreement

The Commission and the Secretary affirm that they will comply with all of the provisions of this Agreement and will continue to meet all the conditions and requirements specified in this Article.

A. *Responsible Administrative Agency:* The Commission is, and shall continue to be, the sole agency responsible for administering this Agreement on behalf of North Dakota on Federal lands throughout the State. OSM shall administer this Agreement on behalf of the Secretary, in accordance with the regulations in 30 CFR Chapter VII.

B. *Authority of State Agency:* The Commission has and shall continue to have authority under State law to carry out this Agreement.

C. *Funds:* The State will devote adequate funds to the administration and enforcement on Federal lands in North Dakota of the requirements contained in the Program. If the State complies with the terms of this Agreement, and if necessary funds have been appropriated, OSM shall reimburse the State as provided in section 705(c) of the Federal Act and 30 CFR 735.16, for costs associated with carrying out responsibilities under this Agreement. The grants procedures established in 30 CFR Part 735 are applicable to funding under this Agreement. Reimbursement shall be in the form of annual grants, and applications for grants shall be processed and grants awarded in a prompt manner.

If sufficient funds have not been appropriated, OSM and the Commission shall promptly meet to decide on appropriate measures that will insure that surface coal mining and reclamation operations are regulated in accordance with the Program.

D. *Reports and Records:* The Commission shall make annual reports to OSM pursuant to 30 CFR 745.12(d), containing information respecting its implementation and administration of the terms of this Agreement. The Commission and OSM shall exchange, upon request, information developed under this Agreement except where prohibited by Federal law. OSM shall provide the Commission with a copy of any final evaluation report concerning State administration and enforcement of this Agreement.

E. *Personnel:* The Commission shall provide the necessary personnel to fully implement this Agreement in accordance with the provisions of the Federal and State Acts and the State Program.

F. *Equipment and Laboratories:* The Commission shall assure itself access to equipment, laboratories, and facilities with which all inspections, investigations, studies, tests, and analyses can be performed and which are necessary to carry out the requirements of this Agreement.

G. *Permit Application Fees and Civil Penalty Assessments:* The amount of the fee accompanying an application for a permit shall be determined in accordance with section 38-14.1-13 of the State Act. All permit fees and civil penalty assessments collected by the State from operators on Federal lands shall be retained by the State and deposited with the State Treasurer. These funds shall be disposed of in accordance with Federal requirements in OMB Circular No. A-102, Attachment E. The financial status report submitted pursuant to 30 CFR 735.26 shall include a report of the amount of permit application fees collected and attributable to Federal lands during the prior Federal fiscal year.

Article V: Policies and Procedures: Review of a Permit Application Package or an Application for a Permit Renewal or Revision

A. *Contents of Permit Application Package:* The Commission and the Secretary will require that an operator proposing to mine on Federal land shall submit an identical permit application package in an appropriate number of copies to the Commission and OSM. Any documentation or information submitted by the operator for the sole purpose of complying with the 3-year requirement of section 7(c) of the Mineral Leasing

Act (30 U.S.C. 181 *et seq.*) will be submitted directly to the Bureau of Land Management, Department of the Interior. The permit application package shall be in the form required by the Commission and include any supplemental information required by the Secretary. The permit application package shall satisfy the requirements of 30 CFR Chapter VII, Subchapter D and shall include the information required by, or necessary for, the Commission and the Secretary, acting within their statutory authority, to make a determination of compliance with:

(1) Chapter 38-14.1 and Chapter 38-18 of the North Dakota Century Code;

(2) Article 69-05.2 of the North Dakota Administrative Code (NDAC);

(3) Applicable terms and conditions of the Federal coal lease;

(4) Applicable requirements of the Bureau of Land Management's 30 CFR Part 211[1] regulations pertaining to the Mineral Leasing Act; and

(5) Applicable requirements of other Federal laws and the Program, including but not limited to those in Appendix A of this Agreement.

B. *Review Procedures:* 1. The Commission shall assume primary responsibility for the analysis, review, and approval of permit applications required by 30 CFR Chapter VII, Subchapter D for surface coal mining on Federal lands in North Dakota. OSM shall, as requested, assist the Commission in this analysis and review.

2. The Commission shall be the primary point of contact for operators regarding the approval of the permit application package, except on matters concerned exclusively with the 30 CFR Part 211[1] regulations administered by the Bureau of Land Management. The Commission will be responsible for informing the applicant of all joint State-Federal or Federal determinations, except matters concerned exclusively with the 30 CFR Part 211[1] regulations. The Commission shall send to the Bureau of Land Management all correspondence with the applicant which may have a bearing on decisions regarding Mineral Leasing Act requirements. Except in exigent circumstances, OSM shall generally not independently initiate contacts with applicants regarding completeness or deficiencies of permit application packages with respect to matters which are properly within the jurisdiction of the Commission. The Commission may arrange for an operator to send written communications and documents regarding a permit application package directly to OSM. The Secretary reserves the right to act independently of the Commission to carry out his responsibilities under laws other than the Federal Act. A copy of any independent correspondence with the applicant required to carry out these responsibilities which may have a bearing on decisions regarding the permit application package shall be sent to the State.

3. OSM is responsible for ensuring that any information OSM receives from an applicant regarding the permit application package is sent to the Commission and the Commission will send any information received from the applicant to OSM. OSM shall have access to Commission files for mines on Federal lands. OSM and the Commission shall regularly coordinate with each other during the permit application package review process.

4. OSM shall be responsible for obtaining, in a timely manner, the views of all Federal agencies with jurisdiction or responsibility over a permit application package on Federal lands in North Dakota and for making these views known to the Commission within 90 days of the receipt of the application by OSM. The Commission shall keep OSM informed of findings during the review which bear on the responsibilities of other Federal agencies. OSM shall take appropriate steps to facilitate discussions between the Commission and the concerned agencies wherever desirable to resolve issues or problems identified in the review.

5. Upon receipt of a permit application package, both OSM and the Commission shall each designate its application manager. The application managers shall serve as the primary point of contact between OSM and the Commission throughout the review process and shall be responsible for identifying areas of avoidable duplication of review and analysis, which shall be eliminated where possible. Not later than 15 days after an application has been received, OSM and the Commission shall discuss the application and agree upon a work plan and schedule for the review of the application. OSM shall thereafter inform the Commission of any specific or general areas of concern, including the scope of required environmental analyses under the National Environmental Policy Act, which require special handling or analysis. The Commission shall likewise inform OSM where OSM assistance will be needed to perform any specific or general analysis or prepare any studies or similar work.

6. The Commission shall prepare a technical-environmental analysis on the permit application package. Copies of drafts of this document shall be sent to OSM for review and comment. OSM shall independently evaluate the documents and inform the Commission within 30 days of any changes that should be made. The Commission shall

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[1] Editorial Note: 30 CFR Part 211 was redesignated as 43 CFR Part 3480 at 48 FR 41589, Sept. 16, 1983.

consider the comments of OSM and send a final technical-environmental analysis to OSM which will form the basis for and be included in the decision document which OSM will prepare for the Secretary's consideration. The Commission shall approve or disapprove the permit application by written decision in accordance with the Program. The Secretary's decision on the mining plan and those other Federal responsibilities which cannot be delegated (including but not limited to those listed in Appendix A) shall be made concurrently with or as soon as possible after the final decision of the Commission on the permit. The permit issued by the Commission shall condition the initiation of surface coal mining operations on Federal lands within the permit area on obtaining mining plan approval from the Secretary. The Commission shall, in the approved permit, reserve the right to amend or rescind its action to conform with action taken, or with terms or conditions imposed, by the Secretary when approving the mining plan. After the Commission makes its decision on the permit, it shall send a notice to the applicant and OSM with a statement of findings and conclusions in support of the action.

7. The Commission may approve and issue permits, permit renewals, and permit revisions for surface disturbances associated with surface coal mining and reclamation operations, and disturbance of the surface may commence without need for an approved mining plan on lands where:

(a) The surface estate is non-Federal and non-Indian;

(b) The mineral estate is Federal and is unleased;

(c) The Commission consults with the Bureau of Land Management through OSM in order to insure that actions are not taken which would substantially and adversely affect the Federal mineral estate; and

(d) The proposed surface disturbances are planned to support surface coal mining and reclamation operations on adjacent non-Federal lands and this is specified in the permit, permit renewal, or permit revision.

8. Any permit renewal requested pursuant to applicable State laws and rules for a surface coal mining and reclamation operation on Federal lands, and for which a mining plan has been approved by the Secretary, shall be reviewed and approved or disapproved by the Commission in consultation with OSM for Federal responsibility under other laws. The Commission shall inform OSM and BLM of the approval or disapproval of the renewal and provide OSM and BLM with copies of the application documents.

9. The Commission shall inform OSM of each permit revision request with respect to surface coal mining and reclamation operations on Federal lands containing leased Federal coal. For other Federal lands, the Commission shall inform the Federal land management agency of each permit revision request. Surface coal mining and reclamation operations shall not occur pursuant to the revision unless the permit revision request has been approved by the Commission and:

(a) With respect to Federal lands containing leased Federal coal—

(i) The Secretary has determined that the permit revision does not constitute a mining plan modification, or

(ii) If the revision does constitute a mining plan modification, the modification has been approved by the Secretary.

(b) With respect to other Federal lands, the Commission has consulted with the Federal land management agency to ensure that the permit revision is consistent with Federal laws and regulations other than the Act.

10. When the Commission and OSM cannot resolve differences that develop during permit application package review or cannot agree on the final actions to be taken by the Commission and the Department, the matter shall be referred to the Governor and the Secretary for resolution.

Article VI: Inspections

The Commission shall conduct inspections on Federal lands and prepare and file inspection reports in accordance with the approved Program.

A. *Inspection Reports:* The Commission shall, within 15 days of conducting any inspection on Federal lands, file with OSM an inspection report describing (1) the general conditions of the lands under the permit; (2) whether the operator is complying with applicable performance and reclamation requirements; and (3) the manner in which specific operations are being conducted.

B. *Commission Authority:* The Commission shall be the point of contact and primary inspection authority in dealing with the operator concerning operations and compliance with the requirements covered by this Agreement, except as described in this Agreement and the Secretary's regulations. Nothing in this Agreement shall prevent inspections by authorized Federal or State agencies for purposes other than those covered by this Agreement.

C. *OSM Authority:* For the purpose of evaluating the manner in which this Agreement is being carried out and to insure that performance and reclamation standards are being met, OSM may conduct inspections of surface coal mining and reclamation operations on Federal lands without prior notice to the Commission. In order to facilitate a joint Federal-State inspection, when OSM is responding to a citizen complaint of an imminent danger to the health or safety of the public or of a significant, imminent environmental harm pursuant to 30 CFR 842.11(b)(1)(i), it will contact the Commission if circumstances and time permit, prior to the Federal inspection. The Department may conduct any inspections necessary to comply with 30 CFR Part 842 and 30 CFR 740.17 (as 30 CFR 740.17 relates to obligations under laws other than the Federal Act). If an inspection is made without Commission inspectors, OSM shall provide the Commission with a copy of the inspection report within 15 days after the inspections.

D. *Witness Availability:* Personnel of the State and the Department shall be mutually available to serve as witnesses in enforcement actions taken by either party.

Article VII: Enforcement

A. *Commission Enforcement:* The Commission shall have primary enforcement authority on Federal lands in accordance with the Program and this Agreement. During any joint inspection by OSM and the Commission, the Commission shall take appropriate enforcement action, including issuance of orders of cessation and notices of violation. OSM and the Commission shall consult prior to issuance of any decision to suspend or revoke a permit.

B. *Notification:* The Commission and OSM shall promptly notify each other of all violations of applicable laws, regulations, orders, approved mining and reclamation plans and permits subject to this Agreement and of all actions taken with respect to such violations.

C. *Secretary's Authority:* (1) This Agreement does not affect or limit the Secretary's authority to enforce violations of laws other than the Federal Act. (2) During any inspection made solely by OSM or any joint inspection where the Commission and OSM fail to agree regarding the propriety of any particular enforcement action, OSM may take any enforcement action necessary to comply with 30 CFR Parts 843 and 845. Such enforcement action shall be based on the substantive standards included in the approved Program and shall be taken using the procedures and penalty system contained in 30 CFR Parts 843 and 845.

Article VIII: Bonds

A. *Bond Coverage and Terms:* The Commission and OSM shall require all operators on Federal lands to submit a single performance bond to cover the operator's responsibilities under the Federal Act and the Program, payable to both the United States and North Dakota. The performance bond shall be of sufficient amount to comply with the requirements of both State and Federal law and release of the performance bond shall be conditioned upon compliance with all applicable requirements. If this Agreement is terminated, the bond will continue in effect and to the extent that Federal lands are involved will be payable to the United States.

Submission of a performance bond does not satisfy the requirements for a Federal lease bond required by 43 CFR Subpart 3474 or a lessee protection bond required in addition to a performance bond, in certain circumstances, by section 715 of the Federal Act.

B. *Bond Release:* The Commission shall obtain OSM's concurrence prior to releasing the operator from any performance bonding obligation required under the Program for any Federal lands containing leased Federal coal. For surface coal mining and reclamation operations on other Federal lands, the Commission shall obtain the concurrence of the Federal land management agency prior to releasing the performance bond. The Commission shall advise OSM of any release of and adjustments made to the performance bond.

C. *Forfeiture:* The operator's performance bond shall be subject to forfeiture with the consent of OSM, in accordance with the procedures and requirements of the Program.

Article IX: Designation of Lands as Unsuitable

The Commission and OSM shall cooperate in the review and processing of petitions to designate lands as unsuitable for surface coal mining operations. When either agency receives a petition which could have an impact on lands the designation of which as unsuitable for mining would be the responsibility of the other agency, the agency shall: (1) Notify the other of its receipt of the petition and of the anticipated schedule for reaching a decision; and (2) request and fully consider data, information and views of the other. The authority to designate Federal lands as unsuitable for mining is reserved to the Secretary or his designated representative.

Article X: Termination of Cooperative Agreement

This Agreement may be terminated as follows:

A. *Termination by the State:* The Agreement may be terminated by the Commission upon written notice to the Secretary, specifying the date upon which the Agreement shall be terminated. The date of termination shall not be less than 90 days from the date of the notice.

B. *Termination by the Secretary:* This Agreement may be terminated by the Secretary according to the following procedures:

1. A written notice from the Secretary to the Commission shall specify the grounds

upon which he proposes to terminate the Agreement. In addition, a written notice containing the grounds for termination shall be published in the FEDERAL REGISTER affording the Commission and the public a minimum of 30 days for comment.

2. A written notice in the FEDERAL REGISTER and a local newspaper of general circulation shall also specify the date and place within the State of North Dakota where the Commission and the public shall be afforded the opportunity for a hearing. The date of such hearing shall not be less than 30 days from the date of publication in the FEDERAL REGISTER. Prior to the time fixed for public hearing, representatives of the Commission may be permitted to appear and confer in person with representatives of the Secretary and present oral or written statements, and any other documents relative to the proposed termination.

3. The proposed termination hearing shall be conducted by OSM and a record shall be made of the hearing. The Commission shall be entitled to have legal, and technical and other representatives present at the hearing, and may present, either orally or in writing, evidence, information, testimony, documents, records or materials as may be relevant to the issues involved.

4. The Secretary's decision shall be made after the hearing and close of the comment period.

5. A decison to terminate the Agreement may be made if the Secretary finds in writing that:

(a) The Commission has substantially failed to comply with the requirements of the Federal Act, 30 CFR Parts 740-746, the Program, or provisions of this Agreement; or

(b) The Commission has failed to comply with any undertaking by the Commission in this Agreement upon which the approval of the Program, this Agreement, or grants by OSM for administration or enforcement of the Program or this Agreement were based.

6. The Secretary shall send written notice of the decision and findings to the Commission and publish notice of it in the FEDERAL REGISTER.

7. This Agreement shall terminate not less than 60 days after publication of the notice of the decision to terminate in the FEDERAL REGISTER. The Commission may remedy any failure during the 60-day period. If the Secretary determines that the State has taken effective remedial action, the Agreement will not terminate.

C. *Termination by Operation of Law:* This Agreement shall terminate by operation of law under either of the following circumstances:

1. When no longer authorized by Federal law or North Dakota laws and regulations; or

2. Upon termination or withdrawal of the Secretary's approval of the Program pursuant to 30 CFR Part 733.

D. *Mutual Termination:* This Agreement may be terminated at any time upon mutual agreement by the Secretary and the Commission.

Article XI: Reinstatement of Cooperative Agreement

If this Agreement has been terminated as provided in Article X, it may be reinstated upon application by the Commission and upon its giving evidence satisfactory to the Secretary that the Commission can and will comply with all the provisions of the Agreement and that the Commission has remedied all defects in administration for which this Agreement was terminated.

Article XII: Amendments To Cooperative Agreement

This Agreement may be amended by mutual agreement of the Commission and the Secretary. An amendment proposed by one party shall be submitted to the other with a statement of the reasons for such proposed amendment. The amendment shall be adopted or rejected in accordance with the requirements of 30 CFR 745.11. The party to whom the proposed amendment is submitted shall signify its acceptance or rejection of the proposed amendment and if rejected shall state the reason for rejection.

Article XIII: Changes in State or Federal Standards

A. *Time for Change:* The Secretary or the State may from time to time promulgate new Federal or State regulations, including new or revised performance or reclamation requirements or enforcement or administration procedures. OSM and the Commission shall immediately inform each other of any final changes in their respective laws or regulations as provided in 30 CFR Part 732. Each party shall, if it is determined to be necessary to keep this Agreement in force, change or revise its regulations and request necessary legislative action. Such changes shall be made under the procedures of 30 CFR Part 732 for changes to the Program and section 501 of the Federal Act for changes to the Federal lands program.

B. *Copies of Changes:* The State and OSM shall provide each other with copies of any changes to their respective laws, rules, regulations, and standards pertaining to the enforcement and administration of this Agreement.

Article XIV: Changes in Personnel and Organization

The Commission and the Secretary shall, consistent with 30 CFR Part 745, advise each other of changes in the organization, structure, functions, duties, and funds of the offices, departments, divisions, and persons within their organizations which could affect administration and enforcement of this Agreement. Each shall promptly advise the other in writing of changes in key personnel, including the head of a department or division, or changes in the functions or duties of persons occupying the principal offices within the structure of the program. The Commission and OSM shall advise each other in writing of changes in the location of offices, addresses, telephone numbers, and changes in the names, location and telephone numbers of their respective mine inspectors and the area within the State for which such inspectors are responsible.

Article XV: Reservation of Rights

In accordance with 30 CFR 745.13, this Agreement shall not be construed as waiving or preventing the assertion of any rights that have not been expressly addressed in this Agreement that the State or the Secretary may have under other laws or regulations, including but not limited to those listed in Appendix A.

Article XVI: Definitions

Terms and phrases used in this Agreement which are defined in 30 CFR Part 700, 701 and 740 shall be given the meanings set forth in those definitions.

Approved:

James G. Watt,
Secretary of the Interior.

Dated: August 11, 1983.

Allen I. Olson,
Governor of North Dakota.

Dated: August 30, 1983.

Bruce Hagen,
President, North Dakota Public Service Commission.

Dated: August 30, 1983.

Leo M. Reinbold,
Commissioner, North Dakota Public Service Commission.

Dated: August 30, 1983.

Dale Sandstrom,
Commissioner, North Dakota Public Service Commission.

Dated: August 30, 1983.

APPENDIX A

1. The Federal Land Policy and Management Act, 43 U.S.C. 1701, *et seq.*, and implementing regulations.
2. The Mineral Leasing Act of 1920, 30 U.S.C. 181, *et seq.*, and implementing regulations including 30 CFR Part 211 *et seq.*
3. The National Environmental Policy Act of 1969, 42 U.S.C. 4321, *et seq.*, and implementing regulations including 40 CFR 1500 *et seq.*
4. The Endangered Species Act, 16 U.S.C. 1531 *et seq.*, and implementing regulations including 50 CFR Part 402.
5. The National Historic Preservation Act of 1966, 16 U.S.C. 470, *et seq.*, and implementing regulations, including 36 CFR Part 800.
6. The Clean Air Act, 42 U.S.C. 7401, *et seq.*, and implementing regulations.
7. The Federal Water Pollution Control Act, 33 U.S.C. 1251, *et seq.*, and implementing regulations.
8. The Resource Conservation and Recovery Act of 1976, 42 U.S.C. 6901 *et seq.*, and implementing regulations.
9. The Reservoir Salvage Act of 1960, amended by the Preservation of Historical and Archaeological Data Act of 1974, 16 U.S.C. 469, *et seq.*
10. Executive Order 11593, Cultural Resource Inventories on Federal Lands.
11. Executive Order 11988 (May 24, 1977), for flood plain protection. Executive Order 11990 (May 24, 1977), for wetlands protections.
12. The Mineral Leasing Act for Acquired Lands, 30 U.S.C 351, *et seq.*, and implementing regulations.
13. The Stock Raising Homestead Act of 1916, 43 U.S.C. 291, *et seq.*
14. The Constitution of the United States.
15. The Constitution of the State of North Dakota, State law, and rules.

[48 FR 41395, Sept. 15, 1983]

PART 935—OHIO

Sec.
935.1 Scope.
935.10 State regulatory program approval.
935.11 Conditions of State regulatory program approval.
935.12 State program provisions disapproved.
935.15 Approval of regulatory program amendments.
935.16 Required program amendments.
935.20 Approval of Ohio Abandoned Mine Land Reclamation Plan Amendment.
935.25 Approval of AML plan amendments.
935.30 State-Federal Cooperative Agreement.

AUTHORITY: Pub. L. 95-87, Surface Mining Control and Reclamation Act of 1977, (30 U.S.C. 1201 *et seq.*)

§ 935.1 Scope.

This part contains all rules applicable only within Ohio that have been adopted under the Surface Mining Control and Reclamation Act of 1977.

[47 FR 34717, Aug. 10, 1982]

§ 935.10 State regulatory program approval.

The Ohio State regulatory program as submtted on February 29, 1980, and resubmitted on January 22, 1982, is conditionally approved, effective August 16, 1982. Beginning on that date, the Department of Natural Resources shall be deemed the regulatory authority in Ohio for all surface coal mining and reclamation operations on non-Indian and non-Federal lands. Only surface coal mining and reclamation operations on non-Indian and non-Federal lands shall be subject to the provisions of the Ohio permanent regulatory program. Copies of the approved program, as amended, are available at:

(a) Division of Reclamation, Ohio Department of Natural Resources, Fountain Square, Building B, Columbus, Ohio 43224; Telephone: (614) 265-6633.

(b) Office of Surface Mining, Room 5315, 1000 L Street, N.W., Washington, D.C. 20240; Telephone: (202) 343-4728.

[48 FR 23193, May 24, 1983]

§ 935.11 Conditions of State regulatory program approval.

The approval of the Ohio State program is subject to the State revising its program to correct the deficiencies listed in this section. The program revisions may be made, as appropriate, to the statute, the regulations, the program narrative, or the Attorney General's opinion. This section indicates, for the general guidance of the State, the component of the program to which the Secretary requires the change be made.

(a)-(e) [Reserved]

(f) Steps will be taken to terminate the approval found in § 935.10.

(1)-(7) [Reserved]

(g) [Reserved]

(h) Steps will be taken to terminate the approval found in § 935.10:

(1) Unless Ohio submits to the Secretary by September 30, 1985, a revised program amendment that demonstrates how the alternative bonding system will assure timely reclamation at the site of all operations for which bond has been forfeited.

(i)-(j) [Reserved]

(k) Steps will be initiated to terminate the approval found in § 935.10.

(1)-(5) [Reserved]

(l)-(m) [Reserved]

[47 FR 34717, Aug. 10, 1982, as amended at 48 FR 1958, Jan. 17, 1983; 48 FR 23193, May 24, 1983; 48 FR 46027, Oct. 11, 1983; 48 FR 46531, Oct. 13, 1983; 49 FR 18482, May 1, 1984; 49 FR 37590, Sept. 25, 1984; 49 FR 43953, Nov. 1, 1984; 50 FR 25710, June 21, 1985]

§ 935.12 State program provisions disapproved.

The following provision of the Ohio permanent regulatory program submission is hereby disapproved:

(a) Section 1513-3-21 of the Ohio Administrative Code is not approved to the extent that it states: "(3) To a permittee from any person or the State of Ohio, if the permittee initiates or participates in any proceeding under Chapter 1513 of the Revised Code upon a finding that the permittee made a substantial contribution to a full and fair determination of the issues and (4) To the Division of Reclamation where it participates in any proceeding under Chapter 1513 of the Revised Code upon a finding that the Division made a substantial contribution to a full and fair determination of the issues."

(b) [Reserved]

[51 FR 16679, May 6, 1986]

§ 935.15 Approval of regulatory program amendments.

(a) The following amendment was approved effective January 17, 1983: Ohio revised rule OAC 1501:13-1-01, adopted September 16, 1982.

(b) The following amendments were approved effective January 31, 1983: Ohio revised rules OAC 1501:13-1-07, 1501:13-4-03, 1501:13-4-04, and

1501:13-4-05, adopted November 4, 1982.

(c) The following amendments were approved effective May 24, 1983:

(1) Ohio revised code (ORC), as amended by SB 240 and 323, adopted March 18, 1983, with the following exceptions: ORC Sections 1513.01(G)(2), 1513.07(B)(2)(n), 1513.13(A)(1), 1513.13(C), 1513.16(A)(10)(b)(ii) and 1513.16(F).

(2) Ohio revised rules, submitted January 6, 1983.

(3) Ohio policy statements dated December 28, 1982.

(d) The emergency rulemaking effective May 2, 1983, by which the original approved language of Ohio revised rule OAC 1501:13-1-02(E) was readopted by the Ohio Division of Reclamation is approved effective May 2, 1983.

(e) The following amendments were approved effective October 13, 1983: Ohio Revised Code Sections 1513.01(G)(2), 1513.01(U), 1513.13(A)(1), 1513.13(C)(1) and 1513.13(C)(3), as amended by Am. Sub. H.B. No. 291, enacted July 1, 1983.

(f) The following amendments submitted to OSM on June 10, August 11 and August 22, 1983, are approved effective upon promulgation of the revised rules by the State, provided the rules are adopted in identical form as submitted to OSM: Ohio Administrative Code Sections 1501:13-1-02, 13-4-04, 13-4-05, 13-4-13, 13-4-14, 13-9-04, 13-12-03, and 13-12-04.

(g) The following amendment submitted to OSM on January 30, 1984, is approved effective upon promulgation of the revised rule by the State, provided the rule adopted is identical to the rule as submitted to and reviewed by OSM: Ohio Administrative Code Section 1501:13-4-13(K)(1).

(h) The following amendments submtted to OSM on February 8, 1984, are approved effective upon promulgation of the rules by the State, provided the rules adopted are identical to the rules as submitted to and reviewed by OSM: Ohio Administrative Code Sections 1501:13-9-15(E)(5), 1513-101 (J), (K), and (L).

(i) The following amendment submitted to OSM on March 5, 1984, is approved effective upon promulgation of the revised rules by the State, provided the rules adopted are identical to the rules as submitted to and reviewed by OSM: Ohio's blaster certification program, as contained in Ohio Administrative Code Section 1501:13-14-05.

(j) The following amendment submitted to OSM on December 28, 1983, as modified on April 25, 1984, is approved effective upon promulgation of the revised rule by the State, provided the rule adopted is identical to the rule as submitted to and reviewed by OSM: Ohio Administrative Code Section 1501:13-14-01.

(k) The following amendments submitted to OSM on June 15, 1984, are approved effective upon promulgation of the rules by the State, provided the rules adopted are identical to the rules submitted to and reviewed by OSM: Ohio Administrative Code sections 1501:13-4-04 (I) and (L); 1501:13-4-13 (I), (J), and (L); 1501:13-9-04 (B)(5) and (G)(15); and Division Advisory Memo No. 31.

(l) The following amendment submitted to OSM on July 23, 1984, is approved effective November, 1, 1984: Ohio Revised Code, contained in Substitute House Bill No. 164.

(m) The following amendment submitted to OSM on March 9, 1984, as modified on August 8, 1984, is approved effective upon promulgation of the revised rule by the State, provided the rule adopted is identical to the rule submitted to and reviewed by OSM: Ohio rule 1501:13-4-13(E)(2).

(n) The following amendment submitted to OSM on September 17, 1984, is approved effective upon promulgation of the revised rule by the State, provided the rule is adopted in identical form as submitted to OSM: Ohio Administrative Code Section 1501:13-2-15.

(o) The following amendment submitted to OSM on July 10 and 23, 1984, and modified on November 26, 1984, is approved effective upon promulgation of the revised rule by the State, provided the rule is adopted in identical form as submitted to and reviewed by OSM: Ohio Administrative Code Section: 1501:13-9-06, (Standards for Use of Explosives).

(p) The following amendments submitted to OSM on July 11, 1984, and modified on August 24, 1984 and February 27, 1985, are approved effective upon promulgation of the revised rules by the State, provided the rules are adopted in identical form as submitted to OSM: Ohio Administrative Code Sections 1513-3-01 through 1513-3-22.

(q) The following amendments submitted to OSM on July 23, 1984, and modified on April 3, 1985, are approved effective upon promulgation of the revised rules by the State, provided the rules are adopted in identical form as submitted to OSM: Ohio Administrative Code Section 1501:13-14-01.

(r) The following amendments submitted to OSM on July 3, 1985, are approved effective upon promulgation of the revised rules by the State, provided the rules are adopted in identical form as submitted to OSM: Ohio Administrative Code Sections 1513-3-01 through 1513-3-22.

(s) The following amendments submitted to OSMRE on November 15, 1985, are approved effective upon enactment of the statutory revisions by the State, provided the amendments as enacted are identical to those submitted to OSMRE: Ohio Revised Code, §§ 1513.07, 1513.33, and 1513.37.

(t) The following amendments submitted to OSMRE on January 15, 1986, as modified on March 7, 1986, are approved effective May 6, 1986: Ohio Administrative Code, sections 1513-3-01, 1513-3-02, 1513-3-03, 1513-3-04, 1513-3-16, and 1513-3-17.

(u) The following amendments submitted to OSMRE on November 15, 1985 and reconciled on March 4, 1986, are approved effective June 9, 1986. Ohio Revised Code 1513.02, 1513.07, 1513.08, 1513.10, 1513.16, 1513.18, 1513.20, 1513.25, 1513.27, 1513.28, 1513.29, 1513.30, 1513.32, 1513.33, 1513.37, 1513.181, 5749.02, and 5749.021.

[48 FR 23193, May 24, 1983, as amended at 48 FR 33482, July 22, 1983; 48 FR 46305, Oct. 12, 1983; 48 FR 46531, Oct. 13, 1983; 49 FR 16991, Apr. 23, 1984; 49 FR 18482, May 1, 1984; 49 FR 23180, June 5, 1984; 49 FR 31678, Aug. 8, 1984; 49 FR 37590, Sept. 25, 1984; 49 FR 43953, Nov. 1, 1984; 49 FR 44463, Nov. 7, 1984; 50 FR 5236, Feb. 7, 1985; 50 FR 10758, Mar. 18, 1985; 50 FR 21257, 21259, May 23, 1985; 50 FR 37849, Sept. 18, 1985; 51 FR 12142, Apr. 9, 1986; 51 FR 16679, May 6, 1986; 51 FR 20820, June 9, 1986]

§ 935.16 Required program amendments.

Pursuant to 30 CFR 732.17, Ohio is required to submit for OSMRE's approval the following proposed amendment by the date specified.

(a) By January 30, 1987, Ohio shall amend its program at OAC 1513-3-21 to be no less effective than 43 CFR Part 4 concerning the award of costs and expenses.

(b) [Reserved]

[51 FR 16679, May 6, 1986]

§ 935.20 Approval of Ohio Abandoned Mine Land Reclamation Plan Amendment.

The Ohio Abandoned Mine Land Reclamation Plan, as submitted on August 16, 1982, is approved. Amendments to this Plan, as submitted on September 5, 1984 are also approved. Copies of the approved program, as amended, are available at:

Ohio Department of Natural Resources, Fountain Square, Columbus, Ohio 43224

Office of Surface Mining Reclamation and Enforcement, Columbus Field Office, 2242 South Hamilton Road, Columbus, Ohio 43232

Office of Surface Mining and Reclamation and Enforcement, Administrative Record—Room 5315, 1100 L Street NW., Washington, D.C. 20240.

[49 FR 41025, Oct. 19, 1984; 49 FR 44996, Nov. 14, 1984]

§ 935.25 Approval of AML plan amendments.

(a) The following amendments were approved effective May 24, 1983:

(1) Ohio revised code (ORC) section 1513.37(D)(2), (D)(4), (D)(5) and (J), adopted March 18, 1983.

[48 FR 23193, May 24, 1983]

§ 935.30 State-Federal Cooperative agreement.

COOPERATIVE AGREEMENT

The Governor of the State of Ohio, acting through the Department of Natural Resources, Division of Reclamation (Division), and the Secretary of the Department of the Interior, acting through the Office of Surface Mining (OSM), enter into a Cooperative Agreement (Agreement) to read as follows:

Article I: Introduction, Purpose, and Responsible Administrative Agency

A. *Authority:* This agreement is authorized by section 523(c) of the Surface Mining Control and Reclamation Act (Act), 30 U.S.C. 1273(c), which allows a State with a permanent regulatory program approved by the Secretary under 30 U.S.C. 1253, to elect to enter into an Agreement with the Secretary of the Department of the Interior for State regulation of surface coal mining and reclamation operations on Federal lands. This Agreement provides for State regulation of surface coal mining and reclamation operations on Federal lands in Ohio which are under the jurisdiction of the United States Department of Agriculture, Forest Service, except those lands containing leased Federal coal, consistent with State and Federal laws governing such activities in Ohio, the Federal lands program (30 CFR Parts 740-745) and the Ohio State program (approved State program).

B. *Purpose:* The purpose of this Agreement is to (a) foster Federal-State cooperation in the regulation of surface coal mining and reclamation operations; (b) eliminate intergovernmental overlap and duplication; and (c) provide uniform and effective application of the approved State program on all lands in Ohio, except those containing leased Federal coal, in accordance with the Act, the approved State program, and this Agreement.

C. *Responsible Administrative Agencies:* The Division shall be responsible for administering this Agreement on behalf of the Governor. The Assistant Secretary, Land and Minerals Management, acting through OSM, shall administer this Agreement on behalf of the Secretary in accordance with the regulations in 30 CFR Chapter VII. The Federal lands in Ohio covered by this Agreement are only those under the jurisdiction of the United States Department of Agriculture, Forest Service (Forest Service) and include all or parts of the Wayne National Forest. It is understood by both parties that the Forest Service will continue to be involved in mining operations on its respective lands pursuant to its laws, regulations, agreements and restrictions. These requirements are in addition to the requirements discussed in this Agreement.

Article II: Effective Date

After it has been signed by the Secretary and the Governor, this Agreement shall be effective upon publication in the FEDERAL REGISTER as a final rule. This Agreement shall remain in effect until terminated as provided in Article V.B. or X.

Article III: Definitions

Any terms and phrases used in this Agreement which are defined in the Act, 30 CFR Parts 700, 701, and 740, or the approved State program shall be given the meanings set forth in said definitions. Where there is a conflict between the above referenced State and Federal definitions, the definitions used in the approved State program will apply, except in the case of a term or phrase which defines the Secretary's nondelegable responsibilities under the Act and other laws.

Article IV: Applicability

In accordance with the Federal lands program in 30 CFR Parts 740-745, the laws, regulations, terms and conditions of the approved State program (conditionally approved on August 10, 1982, 30 CFR Part 935, or as hereinafter amended in accordance with 30 CFR 732.17) are applicable to surface coal mining and reclamation operations on Federal lands in Ohio except as otherwise stated in this Agreement, the Act, 30 CFR 745.13, or other applicable laws or regulations.

This Agreement does not apply to surface coal mining and reclamation operations on lands containing leased Federal coal. This Agreement applies only to lands under the jurisdiction of the Forest Service.

Article V: General Requirements

The Governor and the Secretary affirm that they will comply with all the provisions of this Agreement and will continue to meet all the conditions and requirements specified in this Article.

A. *Authority of State Agency:* The Division has and shall continue to have the authority under State law to carry out this Agreement.

B. *Funds:* Upon application by the Division and subject to the availability of appropriations, the Department shall provide the State with the funds to defray the costs associated with carrying out responsibilities under this Agreement as provided in section 705(c) of the Act and 30 CFR Part 735. If the State requests funds and sufficient funds have not been appropriated to OSM, OSM and the Division shall meet promptly to decide on appropriate measures that will ensure that surface coal mining and reclamation operations are regulated in accordance with the approved State program. If agreement cannot be reached, then either party may terminate the Agreement. Funds provided to the State under this Agreement shall be reduced; in proportion to the amount of fees collected by the State that are attributable to the Federal lands covered by this Agreement.

C. *Reports and Records:* The Division shall make annual reports to OSM on the results of the Division's implementation and administration of this Agreement, pursuant to 30 CFR 745.12(d). Upon request, the Division and OSM shall exchange information developed under this Agreement, except where prohibited by Federal law. OSM shall provide the Division with a copy of any final evaluation report prepared concerning the Division's administration and enforcement of this Agreement.

D. *Personnel:* The Division shall have the necessary personnel to implement this Agreement fully in accordance with the provisions of the Act and the approved State program.

E. *Equipment and Laboratories:* The Division will assure itself access to facilities which are necessary to carry out the requirements of the Agreement.

Article VI: Review of a Permit Application Package

The Division shall assume the primary responsibility for the review of permit application packages for surface coal mining and reclamation operations on Forest Service lands covered by this Agreement. The Division shall coordinate the review of permit application packages with the Forest Service and other Federal agencies which may be affected by the proposed surface coal mining and reclamation operation to ensure compliance with Federal laws other than the Act and regulations other than the approved State program. When requested by the State, OSM shall assist the State in identifying Federal agencies other than the Forest Service which may be affected by the mining proposal.

A. *Submission of Permit Application Package:* The Division shall require an operator proposing to mine on Forest Service lands to submit a permit application package in an appropriate number of copies to the Division. The permit application package shall be in the format required by the Divison and include any supplemental information (as specified by OSM or the Forest Service) needed to satisfy the requirements of non-delegable requirements of the Act, Federal laws other than the Act, and regulations other than the approved State program.

B. *Coordination With Affected Agencies:* Upon receipt, the Division shall transmit a copy of the complete permit application package to the Forest Service and to other Federal agencies affected by the proposed surface coal mining and reclamation operation with a request for review pursuant to 30 CFR 740.13(c)(4). OSM shall determine whether or not a proposed surface coal mining and reclamation operation is prohibited or limited by the requirements of section 522(e) of the Act (30 U.S.C. 1272(e)) and 30 CFR Parts 760-762 with respect to Federal areas designated by Congress as unsuitable for mining and shall make any necessary determinations under section 522(b) of the Act. The Division shall obtain, in a timely manner, the comments of the Forest Service and other Federal agencies affected by the mining proposal.

C. *Contact With the Applicant:* As a matter of practice, OSM will not independently initiate contacts with the applicant regarding permit application packages. However, OSM reserves the right to act independently of the Division to carry out any non-delegable responsibilities under the Act, or under other Federal laws and regulations, provided, however, that OSM shall inform the Division of the necessity of such action taken and send copies of all relevant correspondence to the Division.

D. *File and Records:* The Division shall maintain a title of all original correspondence with the applicant and any information received which may have a bearing on decisions regarding surface coal mining and reclamation operations on Forest Service lands. Upon request, the Division shall provide, for OSM or Forest Service review, copies of any titles and records for surface coal mining and reclamation operations on Forest Service lands.

E. *Permit Application Decision and Permit Issuance:* After consultation with the Forest Service and after making a finding of compliance with the approved State program and other applicable requirements, the Division may approve a permit application or application for permit revision or renewal and issue a permit. The permit issued by the Division shall condition the initiation of surface coal mining and reclamation operations on compliance with the requirements of the approved State program and, as applicable, requirements of OSM or the Forest Service pursuant to Federal laws other than the Act and regulations other than the approved State program. After the Division issues its decision on the permit application, it shall promptly send a notice of the action to OSM and to the Forest Service.

Article VII: Inspections

The Division shall conduct inspections on Forest Service lands covered by this Agreement and prepare and file inspection reports in accordance with the approved State program.

A. *Inspection Reports:* The Division shall, within 15 days of conducting any inspection on Federal lands, file with OSM an inspection report describing (1) the general conditions of the lands under the permit; (2) whether the operator is complying with the applicable performance and reclamation requirements; and (3) the manner in which specific operations are being conducted.

B. *Division Authority:* The Division shall be the point of contact and primary inspection authority in dealing with the operator concerning operations and compliance with the requirements covered by this Agreement, except as described in this Agreement and the Secretary's regulations. Nothing in this Agreement shall prevent inspections by authorized Federal or State agencies for purposes other than those covered by this Agreement.

C. *OSM Authority:* For the purpose of evaluating the manner in which this Agreement is being carried out and to insure that performance and reclamation standards are being met, OSM may conduct inspections of surface coal mining and reclamation operations on Federal lands, without prior notice to the Division. In order to facilitate a joint Federal-State inspection, when OSM is responding to a citizen complaint of an imminent danger to the health or safety of the public or of a significant, imminent environmental harm pursuant to 30 CFR 842.11(b)(1)(i), it will contact the Division, if circumstances and time permit, prior to the Federal inspection. OSM may conduct any inspections necessary to comply with 30 CFR Part 842. If an inspection is made without Division inspectors, OSM shall provide the Division with a copy of the inspection report within 10 days after inspection.

D. *Witness Availability:* Personnel of the State and OSM shall be mutually available to serve as witnesses in enforcement actions taken by either party.

Article VIII: Enforcement

A. *Division Enforcement:* The Division shall have primary enforcement authority on Federal lands covered by this Agreement in accordance with the approved State program and this Agreement. During any joint inspection by OSM and the Division, the Division shall take appropriate enforcement action, including issuance of orders of cessation and notices of violation.

B. *Notification:* The Division shall promptly notify the Forest Service of all violations of applicable laws, regulations, orders, and approved permits for surface coal mining and reclamation operations on lands administered by the Forest Service.

C. *Secretary's Authority:* (1) This Agreement does not affect or limit the Secretary's authority to enforce violations of laws other than the Act. (2) During an inspection made solely by OSM or any joint inspection where the Division and OSM fail to agree regarding the propriety of any particular enforcement action, OSM may take any enforcement action necessary to comply with 30 CFR Parts 843 and 845. Such enforcement action shall be based on the Act or the applicable substantive provisions included in the regulations of the approved State program and shall be taken using the procedures and penalty system contained in 30 CFR Parts 843 and 845.

Article IX: Bonds

A. *Performance Bond:* The Division shall require all operators on Federal lands covered by this Agreement to submit a performance bond to cover the operator's responsibilities under the Federal Act and the approved State program, payable to both the United States and Ohio. The performance bond shall be of sufficient amount to comply with the requirements of the approved State program and any other conditions of the permit. Release of the performance bond shall be conditioned upon compliance with all applicable requirements. The Division shall obtain the concurrence of the Forest Service prior to releasing the operator from any obligation under the performance bond. If this Agreement is terminated, (1) the bond will revert to being payable only to the United States to the extent that Federal lands are involved, and (2) the bond will be delivered by the Division to OSM if only Federal lands are covered by the bond.

B. *Forfeiture:* In the event of forfeiture by an operator of the performance bond for surface coal mining and reclamation operations on Federal lands covered by this Agreement, the State shall use funds received from bond forfeiture and, where necessary, funds from the Ohio Reclamation Forfeiture Special Account (pursuant to Section 1513.18 of the Ohio Revised Code) to ensure that reclamation is accomplished in accordance with the approved State program and the approved permit.

Article X: Termination of Cooperative Agreement

This Agreement may be terminated by the Governor or the Secretary under the provisions of 30 CFR 745.15.

Article XI: Reinstatement of Cooperative Agreement

If this Agreement has been terminated in whole or in part it may be reinstated under the provisions of 30 CFR 745.16.

Article XII: Amendment of Cooperative Agreement

This Agreement may be amended by mutual agreement of the Governor and the Secretary in accordance with 30 CFR 745.14.

Article XIII: Changes in State or Federal Standards

A. *Effect of Changes:* The Secretary or the State may promulgate new Federal or State regulations, including new or revised performance or reclamation requirements or enforcement or administration procedures. OSM and the Division shall immediately inform each other of any final changes and of any effect such changes may have on the cooperative agreement. If it is determined to be necessary to keep this Agreement in force, the Division shall request necessary State legislative action and each party shall revise its regulations or promulgate new regulations, as applicable. Such changes shall be made under the procedures of 30 CFR Part 732 for changes to the approved State program and sections 501 and 523 of the Federal Act for changes to the Federal lands program.

B. *Copies of Changes:* The State and OSM shall provide each other with copies of any changes to their repsective laws, rules, regulations, and standards pertaining to the enforcement and administration of this Agreement.

Article XIV: Changes in Personnel and Organization

The Division and the Secretary shall, consistent with 30 CFR Part 745, advise each other of substantial changes in statutes, regulations, funding, staff, or other changes which could affect the administration and enforcement of this Agreement.

Article XV: Reservation of Rights

This Agreement does not delegate nor shall it be construed to delegate any of the authority that the Secretary has retained under 30 CFR 745.13 or under other laws or regulations.

Approved:

Richard F. Celeste,

Governor of Ohio.

Dated: April 3, 1984.

William Clark,

Secretary of the Interior.

Dated February 22, 1984.

[49 FR 14739, Apr. 13, 1984]

PART 936—OKLAHOMA

Sec.
936.1 Scope.
936.10 State program approval.
936.15 Approval of regulatory program amendments.
936.16 [Reserved]
936.17 Direct Federal enforcement of State program.
936.18 Remedial actions.
936.19 Termination of Federal enforcement of State program.
936.20 Approval of Oklahoma Abandoned Mine Land Reclamation Plan.

AUTHORITY: Sec. 503, Pub. L. 95-87, 91 Stat. 407 (30 U.S.C. 1253).

§ 936.1 Scope.

This part contains all rules applicable only within Oklahoma that have been adopted under the Surface Mining Control and Reclamation Act of 1977.

[46 FR 4910, Jan. 19, 1981]

§ 936.10 State program approval.

(a) The Oklahoma State Program, as submitted on February 28, 1980, and amended on June 11, 1980, and resubmitted on December 8, 1980, is approved subject to the conditions set forth in § 936.11. Copies of the approved program together with copies of the letter from the Oklahoma Department of Mines agreeing to the conditions in § 936.11, are available at:

Office of Surface Mining Reclamation and Enforcement, Region IV, 5th Floor, Scarritt Building, 818 Grand Avenue, Kansas City, Missouri 64106, Telephone: (816) 374-3920.

Oklahoma Department of Mines, 4040 N. Lincoln, Suite 107, Oklahoma City, Oklahoma 73105, Telephone (405) 521-3859.

Office of Surface Mining Reclamation and Enforcement, Room 153, Interior South Building, 1951 Constitution Avenue, NW., Washington, D.C. 20240, Telephone: (202) 343-4728.

(b) In its May 16, 1980, opinion, the U.S. District Court for the District of Columbia ordered the Secretary to affirmatively disapprove any regulation in a State program which incorporates a suspended or remanded Federal regulation. A list follows of provisions contained in the Oklahoma submission which are based on suspended or remanded Federal regulations. These regulations are affirmatively disapproved to the extent indicated or, if no limitation is indicated, in their entirety.

(1) Section 701.5, the definition of "mine plan area," and the use of the term in Parts 779, 780, 783, and 784, to the extent of the court's decision re-

garding requirements of information outside the permit area.

(2) Section 761.5, the definition of "public road."

(3) Section 761.5(a)(2)(ii), the definition of "valid existing rights," to the extent it does not allow recognition of such rights an operator may claim by having made a good faith effort to obtain all permits before 8/3/77 as stipulated by the court's decision.

(4) Sections 761.11(c) and 761.12(f)(1) to the extent that they prohibit or restrict mining near places only eligible for listing on the National Register of Historic Places, and the words "or a statutory or regulatory responsibility for" in § 761.12(f). Further, both rules to the extent that they apply to privately-owned places listed on the National Register of Historic Places in addition to publicly-owned places.

(5) Sections 779.20, 780.16, 783.20 and 784.21 requiring a permit application to contain a study of fish and wildlife and to include a fish and wildlife reclamation plan.

(6) Section 783.14(a)(1) insofar as it requires a geologic description of the strata down to and immediatly below any coal seam for areas to be affected only by "surface operations and facilities," where no removal of overburden down to the level of the coal seam will occur.

(7) Section 785.17(a) concerning the prime farmland grandfather clause.

(8) Sections 785.17(b)(3) and 823.14(c) concerning excessive soil compaction.

(9) Section 785.17(b)(8) to the extent that it requires prime farmland reclamation target yields to be based on estimated yields under a high level of management rather than a level of management equivalent to that used on prime farmlands in the surrounding area.

(10) Section 786.5 to the extent that "or has not been" is no longer part of the definition of "irreparable damage to the environment."

(11) Sections 816.42(a) (1) and (7) and 817.42(a) (1) and (7) to the extent they apply effluent standards to the reclamation phase of a surface coal mining operation.

(12) Sections 816.42(b) and 817.42(b) relating to effluent standard exemptions during major storm periods.

(13) Sections 816.46(b) and 817.46(b) concerning sediment storage volume in sediment ponds.

(14) Sections 816.46(c) and 817.46(c) concerning detention time for water in sediment ponds.

(15) Sections 816.46(d) and 817.46(d) to the extent they require dewatering devices to have a discharge rate to achieve and maintain the theoretical detention time for sediment ponds.

(16) Sections 816.46(h) and 817.46(h) concerning sediment removal from sediment ponds.

(17) Sections 816.65(f) and 817.65(f) requiring special approval prior to blasting within 1,000 feet of certain buildings and 500 feet of other facilities and which restrict blasting at distances greater than 300 feet.

(18) Sections 816.83(a) and 817.83(a) concerning coal processing waste banks to the extent they preclude a possible exemption from the underdrain requirement where the operator can demonstrate that an alternative would ensure structural integrity of the waste bank and protection of water quality.

(19) Sections 816.95 and 817.95 concerning air resources protection to the extent they apply to air pollution not caused by erosion.

(20) Sections 816.103(a)(1) and 817.103(a)(1) to the extent they do not provide operators the option of treating acid-forming and toxic-forming material in lieu of covering such materials.

(21) Sections 816.115 and 817.115 to the extent they require an operator who proposes range or pasture as the post-mining land use to use actually the land for grazing for the last two years of bond liability.

(22) Sections 823.11(c), 823.15(b) and 823.15(c) to the extent they require an operator on prime farmland actually to return the land to crop production.

(23) Sections 817.101(b)(1) and 817.102 applying the "approximate original contour" (AOC) regulations to underground mining.

(24) Section 823 to the extent that it does not provide an exemption for surface facilities actively used over ex-

tended periods, but which affect a minimal amount of land.

(25) Sections 816.116(b) and 817.116(b) to the extent that they state that an operator's responsibility for successful revegetation is not commenced until the vegetation reaches 90 percent of the natural cover in the area.

(26) Sections 816.133(c) (4) and (9) and 817.133(c) (4) and (9) to the extent they require an operator to provide "letters of commitment" for proposed land use changes or for proposed cropland use.

(27) Section 817.52(a)(1) to the extent that it requires ground water monitoring to determine the effects of underground mining activities on the recharge capacity of reclaimed land.

(28) Sections 845.12—845.16 to the extent they impose a civil penalty point system.

[46 FR 4910, Jan. 19, 1981]

§ 936.15 Approval of regulatory program amendments.

(a) The Oklahoma permanent regulatory program amendment consisting of a set of new permanent rules, received by OSM on January 22, 1982, as corrected by Oklahoma on March 18, 1982, is approved effective April 2, 1982.

(b) The Oklahoma program amendment to §§ 816.42(b) and 817.42(b) of the Oklahoma rules governing effluent limitations, received by OSM on February 22, 1983, is approved effective May 4, 1983.

(c) The following amendments to the Oklahoma permanent regulatory program submitted to OSM on May 13, 1983 are approved effective August 28, 1984:

(1) Revision to Oklahoma statute at 45 O.S. 1981, section 774(c) governing citizen access to State courts;

(2) Revision to Oklahoma statute at 45 O.S. 1981, section 786(E) concerning award of costs and expenses;

(3) Adoption by Oklahoma of new rules of practice and procedure at §§ 4.1000 through 4.1400;

(4) Revision to Oklahoma statute at 45 O.S. 1981, § 746.16 concerning authority to administer Small Operator Assistance Program and the implementing State rules at section 795 with the exception of § 795.9(e).

(5) Revision to Oklahoma statute at 45 O.S. 1981, § 745.2 governing transfer of permits;

(6) Adoption by Oklahoma of new rules at §§ 788.17 through 788.19 governing the transfer, sale or assignment of rights under permits;

(7) Revision to Oklahoma rule at § 816.64 concerning public notification of proposed blasting schedules; and

(8) Revision to Oklahoma rules at Parts 842, 843 and 845 concerning inspection and enforcement provisions.

(d) The following amendment submitted to OSM on July 8, 1983, is approved effective March 18, 1985. Oklahoma's regulations governing application requirements for exploration operations of more than 250 tons at section 776.12 of the Oklahoma Department of Mines, Rules and Regulations (DOM/RR); the State regulatory authority's responsibility for approving or disapproving, including the criteria for approval and terms of approval of application for coal exploration operations in excess of 250 tons at section 776.13 of DOM/RR; the Department of Mines' public notification requirements for actions taken on applications for exploration operations in excess of 250 tons at section 776.14 of DOM/RR; the application of appropriate performance standards and enforcement provisions for coal exploration operations in excess of 250 tons at section 776.15 of DOM/RR; the public availability of information relating to coal exploration operations at section 776.17 of DOM/RR; the minimum bonding requirement for coal exploration operations which either remove more than 250 tons or substantially disturb the land surface at section 776.18 of DOM/RR; the general responsibility of persons conducting coal exploration operations at section 815.11 of DOM/RR, to reflect the amended coal exploration application sections of DOM/RR Part 776; and the revised scope and objectives of applicable performance standards of section 815.5 at sections 816.1 and 816.2 of DOM/RR.

(e) The following amendment submitted July 16, 1985, is approved effective January 1, 1986: Revisions to

Oklahoma statute at 45 O.S. 1981, as amended by Enrolled Senate Bill No. 332, and signed by the Governor on July 8, 1985.

(f) The following amendments to the Oklahoma permanent regulatory program submitted to OSMRE on August 15, 1985, is approved effective January 14, 1986: Legal opinion from the Attorney General of Oklahoma concerning the State's ability to provide for the administration and funding of the Small Operator Assistance Program.

(g) The following amendment to the Oklahoma permanent regulatory program submitted to OSM on September 11, 1985, is approved effective January 16, 1986: Revisions to the Oklahoma rules consisting of the definitions of "surface coal mining operations", at § 700.5 and "coal preparation" and "coal preparation plant" at § 701.5.

(h) The following amendment, as submitted to OSMRE on August 8, 1985, is approved effective April 28, 1986: Modifications to Part 850 of the Rules and Regulations of the Oklahoma Department of Mines to establish a program for blaster training, examination and certification.

(Pub. L. 95-87, Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*))

[48 FR 20050, May 4, 1983, as amended at 49 FR 34002, Aug. 28, 1984; 50 FR 10760, Mar. 18, 1985; 50 FR 50297, Dec. 10, 1985; 51 FR 1509, Jan. 14, 1986; 51 FR 2361, Jan. 16, 1986; 51 FR 15769, Apr. 28, 1986]

§ 936.16 [Reserved]

§ 936.17 Direct Federal enforcement of State program.

Starting on the effective date of this decision and until otherwise specified by the Director, OSM shall continue to directly implement, administer and enforce the approved Oklahoma regulatory program to the extent specified below. The authority of the Oklahoma Department of Mines to implement the Oklahoma regulatory program is restored to the extent specified below.

(a) With respect to enforcement actions initiated by the State prior to April 30, 1984, ODM shall continue to have authority to take administrative enforcement actions to bring outstanding violations to a final disposition (including issuing proposed assessments, assessing penalties, holding informal conferences and hearings, and collecting penalties). However, any termination or vacation of enforcement actions for operations under the jurisdiction of OSM by ODM shall not take effect until approved by OSM.

(b) Upon the satisfactory completion of the requirements specified in 30 CFR 936.18 (a) and (b) but no earlier than January 1, 1986, ODM will have authority to implement the Oklahoma regulatory program for all mines where mining has been completed or the site has been abandoned and no further mining at that site is intended by any person. OSM, by December 16, 1985, will provide ODM with a list of the permits in the above categories.

(c) Beginning after January 1, 1986, ODM will have authority to implement the Oklahoma regulatory program for individual active and temporarily closed operations for which ODM has reevaluated and revised the permits and reclamation bonds in accordance with the procedures and processes specified in 30 CFR 936.18 (c) and (d). Upon an affirmative demonstration to OSM that a reevaluated permit is in compliance with the approved program, OSM will notify ODM that the individual permit is returned to the State's jurisdiction.

(d) OSM will continue to conduct all inspections of coal exploration and surface coal mining and reclamation operations on non-Indian and non-Federal lands within the State, including bond release inspections with the exception of those specified paragraphs in (b) and (c) above, in accordance with sections 517, 518, 521, 525, and 526 of the Federal Act, 30 U.S.C. 1267, 1268, 1271, 1275, and 1276 30 CFR Parts 842, 843 and 845, and 43 CFR Part 4. With respect to enforcement actions initiated by ODM prior to April 30, 1984, OSM will conduct follow-up inspections at all sites with outstanding violations on or after the abatement dates specified in the State-issued notices of violation, unless the site has been returned to the State's jurisdiction under the provisions of paragraphs (b) and (c) above.

(e) OSM will continue to issue, modify, enforce and terminate notices of violation, cessation orders and show cause orders in accordance with sections 517, 518, 521, 525, and 526 of the Federal Act, 30 U.S.C. 1267, 1268, 1271, and 1276, and 30 CFR Parts 842, 843 and 845, and 43 CFR Part 4. With respect to enforcement actions initiated by ODM prior to April 30, 1984, OSM will continue to issue failure-to-abate cessation orders if the operator has not or does not abate the violation by the abatement date set in the State-issued notice of violation. OSM will continue to issue notices of violation for any violation observed by an OSM inspector that has not been previously cited by the State. OSM will continue to issue cessation orders for any condition or practice which creates an imminent danger to the health or safety of the public, or is causing, or can reasonably be expected to cause significant, imminent environmental harm to land, air or water resources.

(f) OSM will continue to impose civil and criminal sanctions as appropriate for violations of the State law, regulations and conditions of permits and exploration approvals, including civil and criminal penalties, in accordance with sections 517, 518, 521, 525, and 526 of the Federal Act, 30 U.S.C. 1267, 1268, 1271, 1275, and 1276, and 30 CFR Parts 842, 843 and 845, and 43 CFR Part 4.

(g) OSM will promptly inform ODM of the results of all follow-up inspections conducted by OSM and of enforcement actions taken which pertain to enforcement actions initiated by ODM prior to April 30, 1984.

(h) Any administrative review of OSM enforcement actions under this section will continue to be carried out pursuant to 43 CFR Part 4.

(i) OSM will continue to be responsible for any outstanding Federal enforcement actions taken since April 30, 1984, including any necessary follow-up inspections on those operations for which inspection and enforcement authority has been returned to ODM in accordance with paragraphs (b) and (c) above. To avoid duplication and placement of an undue burden on operators, ODM will not be required to pursue additional enforcement action on violations previously cited by OSM.

[50 FR 49386, Dec. 2, 1985]

§ 936.18 Remedial actions.

As a prerequisite to the Oklahoma Department of Mines to resume authority to implement the provisions of the Oklahoma surface coal mining regulatory program that are being directly enforced by the Office of Surface Mining as specified under 30 CFR 936.17, the Director requires that Oklahoma carry out the remedial measures specified below.

(a) To minimize the potential for confusion and misunderstanding about the Permitting and Inspection and Enforcement Plans during the resumption of authority, ODM must identify or provide to OSM by December 16, 1985, copies of policy statements, guidelines, procedures and forms that are presently in use; policy statements, guidelines, procedures and forms that have been changed since submission of the plans; and policy statements, guidelines, procedures and forms that are being proposed, including timeframes for projected implementation.

(b) ODM must prepare and provide to OSM by December 16, 1985, lists identifying the current backlog of bond forfeiture actions and of injunctive relief proceedings regarding state-issued violations and a plan including necessary commitments from the Attorney General's office as to how Oklahoma intends to address this backlog.

(c) Permitting and bonding processes will be in accordance with the Permitting plan and in compliance with the approved Oklahoma program. Specifically, ODM will implement procedures to:

(1) Calculate and set bonds sufficient to allow third party reclamation.

(2) Process bond forfeiture actions in a timely manner.

(3) Assure against after-the-fact revisions to permits.

(4) Prevent issuance of permits to operators with outstanding enforcement actions or unpaid AML fees pursuant to § 786.19 (g) and (h) of the approved Oklahoma regulations.

(5) Assure against inappropriate incidential boundary changes.

(d) ODM will reevaluate and revise permits for active and temporarily closed operations with emphasis being placed on those relevant permitting deficiencies identified in the 1985 Annual Evaluation Report and place a high priority on those operations that have not received a permanent program permit. After reevaluation, ODM will require additional reclamation bond for those active and temporarily closed operations that are found to be under-bonded.

(e) ODM will conduct joint inspections with OSM inspectors on a monthly basis for the first three months (one complete inspection and two partial inspections) on those permits described in 30 CFR 936.17(c) for which inspection and enforcement authority has been returned.

(f) ODM shall continue to submit to OSM a report once every three months on the State's progress in the following program areas:

(1) Reevaluating existing permits including bond adequacy;

(2) Reevaluating bond release actions since August 10, 1982;

(3) Notifying operators of additional permit application and/or bond information requirements;

(4) Processing new permits or permit revisions;

(5) Processing petitions to designate land as unsuitable for surface mining.

[50 FR 49386, Dec. 2, 1985]

§ 936.19 Termination of Federal enforcement of State program.

(a) The Director will return to Oklahoma the remaining authority suspended under 30 CFR 936.17 provided the following requirements have been met:

(1) The State has accomplished to the satisfaction of the Director all remedial actions specified under 30 CFR 936.18 (a), (b) and (f).

(2) The State has completed the affirmative demonstrations and resumed inspection and enforcement authority for all individual permits as described in 30 CFR 936.18 (c), (d) and (e).

(b) Upon satisfaction of the requirements specified in paragraph (a) of this section, the Director will announce in the FEDERAL REGISTER his decision to restore to Oklahoma all program authority and terminate the procedures initiated under 30 CFR 733.12.

[50 FR 49387, Dec. 2, 1985]

§ 936.20 Approval of Oklahoma Abandoned Mine Land Reclamation Plan.

The Oklahoma Abandoned Mine Land Reclamation Plan, as submitted on July 30, 1981, is approved. Copies of the approved Plan are available at:

The Office of Surface Mining Reclamation and Enforcement, 1100 L St., NW., Room 5315, Washington, D.C. 20240

Office of Surface Mining Reclamation and Enforcement, 333 W. Fourth Street, Room 3432, Tulsa, Oklahoma 74103

Oklahoma Conservation Commission, 10 State Capitol Building, Oklahoma City, Oklahoma 73105

[47 FR 2991, Jan. 21, 1982]

PART 937—OREGON

Sec.

937.700 General.
937.701 General.
937.707 Exemption for coal extraction incident to government-financed highway or other construction.
937.761 Areas designated unsuitable for surface coal mining by Act of Congress.
937.762 Criteria for designating areas as unsuitable for surface coal mining operations.
937.764 Process for designating areas unsuitable for surface coal mining operations.
937.770 General requirements for permit and exploration procedures.
937.771 General requirements for permits and permit applications.
937.776 General requirements for coal exploration.
937.778 Surface mining permit applications—minimum requirements for legal, financial, compliance, and related information.
937.779 Surface mining permit applications—minimum requirements for information on environmental resources.
937.780 Surface mining permit applications—minimum requirements for reclamation and operation plan.
937.782 Underground mining permit applications—minimum requirements for legal, financial, compliance, and related information.
937.783 Underground mining permit applications—minimum requirements for information on environmental resources.
937.784 Underground mining permit applications—minimum requirements for reclamation and operation plan.
937.785 Requirements for permits for special categories of mining.

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937.786 Review, public participation, and approval or disapproval of permit applications and permit terms and conditions.
937.787 Administrative and judicial review of decisions on permit applications.
937.788 Permit reviews, revisions, and renewals, and transfer, sale, and assignment of rights granted under permits.
937.795 Small operator assistance.
937.800 General requirements for bonding of surface coal mining and reclamation operations.
937.815 Performance standards—coal exploration.
937.816 Performance standards—surface mining activities.
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937.818 Special performance standards—concurrent surface and underground mining.
937.819 Special performance standards—auger mining.
937.823 Special performance standards—operations on prime farmland.
937.824 Special performance standards—mountaintop removal.
937.826 Special performance standards—operations on steep slopes.
937.827 Special performance standards—coal processing plants and support facilities not located at or near the minesite or not within the permit area for a mine.
937.828 Special performance standards—in situ processing.
937.842 Federal inspections.
937.843 Federal enforcement.
937.845 Civil penalties.
937.955 Certification of blasters.

AUTHORITY: Pub. L. 95-87, the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201 *et seq.*

SOURCE: 47 FR 49822, Nov. 2, 1982, unless otherwise noted.

§ 937.700 General.

(a) This part contains all rules that are applicable to surface coal mining operations in Oregon which have been adopted under the Surface Mining Control and Reclamation Act of 1977.

(b) The rules in this part cross-reference pertinent parts of the permanent program regulations in this chapter. The full text of a rule is in the permanent program rule cited under the relevant section of the Oregon Federal program.

(c) The rules in this part apply to all surface coal mining operations in Oregon conducted on non-Federal and non-Indian lands. The rules in Subchapter D of this chapter apply to operations on Federal lands in Oregon.

(d) The information collection requirements contained in this part do not require approval by the Office of Management and Budget under 44 U.S.C. 3507 because there are fewer than ten respondents annually.

(e) The following provisions of Oregon laws provide, where applicable, for more stringent environmental control and regulation of surface coal mining operations than do the provisions of the Act and the regulations in this chapter. Therefore, pursuant to Section 505(b) of the Act, they shall not be construed to be inconsistent with the Act:

(1) Oregon Revised Statutes (ORS) 468.700-468.997, pertaining to the control of water pollution.

(2) ORS 498.002 and ORS 498.705, protecting fish and wildlife and their habitats.

(3) ORS 509.125, prohibiting deleterious substances from being introduced into State waters.

(4) ORS 509.140, requiring the approval of the Fish and Wildlife Commission before explosives may be used to construct a dam or similar structure.

(5) ORS 509.600, prohibiting the injury or destruction of fish within 600 feet of any fishway. Prior approval of the Director, the Department of Fish and Wildlife, is required before contructing a dam or obstruction in State waters.

(6) ORS 509.615, requiring that artificial watercourses must be screened.

(f) The following are Oregon laws that interfere with the achievement of the purposes and requirements of the Act and are, in accordance with section 504(g) of the Act, pre-empted and superseded with respect to coal mining, except to the extent they provide for regulation of surface coal mining and reclamation operations which are exempt from the Surface Mining Control and Reclamation Act of 1977:

(1) Oregon Surface Mining and Mine Land Reclamation Act, as amended, ORS 517.750-ORS 517.990.

(2) Oregon Administrative Rules (OAR), Department of Geology and Mineral Industries, Division 30, Rules

and Regulations, Oregon Mined Land Reclamation Act, OAR 632-30-005 through OAR 632-30-060.

(3) ORS 273.551 and ORS 273.775 to ORS 273.790. The contractual and leasing responsibility of the Division of Lands over State lands and minerals is not affected by this Federal program.

(4) ORS 275.340. Pre-empted to the extent that the State of Oregon construes this statute as delegating to cities and counties the authority to issue surface coal mining permits and related exploration permits.

§ 937.701 General.

Sections 700.5, 700.11, 700.12, 700.13, 700.14, 700.15 and Part 701 of this chapter shall apply to surface coal mining operations in Oregon.

§ 937.707 Exemption for coal extraction incident to government-financed highway or other construction.

Part 707 of this chapter, *Exemption for Coal Extraction Incident to Government-financed Highway or Other Construction*, shall apply to surface coal mining and reclamation operations.

§ 937.761 Areas designated unsuitable for surface coal mining by Act of Congress.

Part 761 of this chapter, *Areas Designated by Act of Congress*, shall apply to surface coal mining and reclamation operations.

§ 937.762 Criteria for designating areas as unsuitable for surface coal mining operations.

Part 762 of this chapter, *Criteria for Designating Areas Unsuitable for Surface Coal Mining Operations*, shall apply to surface coal mine operations beginning one year after May 28, 1982.

§ 937.764 Process for designating areas unsuitable for surface coal mining operations.

Part 764 of this chapter, *State Processes for Designating Areas Unsuitable for Surface Coal Mining Operations*, pertaining to petitioning, initial processing, hearing requirements, decisions, data base and inventory systems, public information, and regulatory responsibilities shall apply to surface coal mine operations beginning one year after May 28, 1982.

§ 937.770 General requirements for permits and exploration procedures.

(a) Part 770 of this chapter, *General Requirements for Permit Systems Under State Program*, shall apply to surface coal mining and exploration operations.

(b) Where applicable, no person shall conduct surface coal exploration operations which result in the removal of more than 250 tons in one location, or surface coal mining operations without permits issued pursuant to leases and/or certificates required by the State of Oregon, including compliance with Oregon's Statewide Planning Goals (ORS 197.180) and any relevant County Comprehensive Land Use Plans (ORS 197.005-ORS 197.775); license from the Division of State Lands where mines or exploration are on State lands (ORS 273.005-273.815); Solid Waste Disposal Permits, Hazardous Waste Transportation and Disposal Permits, Industrial Waste Disposal Permits issued by the Department of Enivronmental Quality (ORS 459.005-ORS 459.850); leases issued by the county where county designated forest lands are involved (ORS 275.340); noise restrictions enforced by the Department of Environmental Quality (ORS 467.010-467.990); Air Contaminant Discharge Permits (ORS 468.005-ORS 468.997), Water Pollution Control Facilities Permits, Waste Discharge Permits (ORS 468.900-ORS 468.997), Energy Facility Site Certificates (ORS 469.300-ORS 469.570, ORS 469.990, ORS 469.992) issued by the Energy Facilities Siting Council; Department of Fish and Wildlife issues permits for dam use (ORS 509.600), for use of explosives used to construct dams or similar structures (ORS 509.140); the State Fire Marshal issues Certificates of Possession for persons having or using explosives (ORS 480.210); the Division of State Lands issues licenses for use of dredging machines (ORS 517.611-ORS 517.700); the Department of Water Resources issues permits with respect to the use, appropriation or diversion of State waters (ORS 537.130, ORS 537.135) and surface waters (ORS 537.135, ORS 537.140 and ORS 537.800), and permits relative to the design, construction and maintenance of dams, dikes or other hydraulic structures or works (ORS 540.350, ORS 540.400); matter may be removed from the beds and banks of State waters and fill may be deposited in State waters once a permit is obtained from the Division of State Lands (ORS 541.605-ORS 541.990).

§ 937.771 General requirements for permits and permit applications.

(a) Part 771 of this chapter, *General Requirements for Permits and Permit Applications*, shall apply to any person who makes application for a permit to conduct surface coal mine operations.

(b) Any person who wishes to conduct new surface coal mining and reclamation operations or who wishes to revise a permit shall file a complete application at least 12 months prior to the date upon which permit issuance is desired and pay to the Secretary a permit fee in accordance with 30 CFR 736.25.

§ 937.776 General requirements for coal exploration.

(a) Part 776 of this chapter, *General Requirements for Coal Exploration*, shall apply to any person who conducts or seeks to conduct coal exploration operations.

(b) The Office shall make every effort to act on an exploration application within 60 days of receipt or such longer time as may be reasonable under the circumstances. If additional time is needed, OSM shall notify the applicant that the application is being reviewed, but more time is necessary to complete such review, setting forth the reasons and the additional time that is needed.

(c) Where coal exploration is to occur on State lands or the minerals to be explored are owned by the State, a mineral lease issued by the Oregon Division of Lands authorizing the coal exploration is required to be filed with the permit application.

§ 937.778 Surface mining permit application—minimum requirements for legal, financial, compliance, and related information.

Part 778 of this chapter, *Surface Mining Permit Applications—Minimum Requirements for Legal, Financial, Compliance, and Related Information*, shall apply to any person who makes application for a permit to conduct surface mining and reclamation operations.

§ 937.779 Surface mining permit applications—minimum requirements for information on environmental resources.

Part 779 of this chapter, *Surface Mining Permit Applications—Minimum Requirements for Information on Environmental Resources*, shall apply to any person who makes application to conduct surface mining and reclamation operations.

§ 937.780 Surface mining permit applications—minimum requirements for reclamation and operation plan.

(a) Part 780 of this chapter, *Surface Mining Permit Applications—Minimum Requirement for Reclamation and Operation Plan*, shall apply to any person who makes application to conduct surface coal mining and reclamation operations on non-Federal and non-Indian lands.

(b) Any application for a permit shall demonstrate compliance with the air quality control laws (ORS 468.275 through ORS 468.350 and ORS 468.500 through ORS 468.580) administered by the Oregon Department of Environmental Quality and shall have obtained, where required, an Air Contaminant Discharge Permit from the Department of Environmental Quality (ORS 468.275 through ORS 468.350).

§ 937.782 Underground mining permit applications—minimum requirements for legal, financial, compliance, and related information.

Part 782 of this chapter, *Underground Mining Permit Applications—Minimum Requirements for Legal, Financial, Compliance, and Related Information*, shall apply to any person who makes application for a permit to conduct underground mining operations.

§ 937.783 Underground mining permit applications—minimum requirements for information on environmental resources.

Part 783 of this chapter, *Underground Mining Permit Applications—Minimum Requirements for Information on Environmental Resources,* shall apply to any person who submits an application to conduct underground mining operations.

§ 937.784 Underground mining permit applications—minimum requirements for reclamation and operation plan.

Part 784 of this chapter, *Underground Mining Permit Applications—Minimum Requirements for Reclamation and Operation Plan,* shall apply to any person who makes application to conduct underground mining.

§ 937.785 Requirements for permits for special categories of mining.

Part 785 of this chapter, *Requirements for Permits for Special Categories of Mining,* shall apply to each person who makes application for a permit to conduct certain categories of surface coal mining and reclamation operations as specified therein.

§ 937.786 Review, public participation, and approval or disapproval of permit applications and permit terms and conditions.

Part 786 of this chapter, *Review, Public Participation, and Approval or Disapproval of Permit Applications and Permit Terms and Conditions,* shall apply to the review of applications made by any person for surface coal mining and reclamation operations.

§ 937.787 Administrative and judicial review of decisions on permit applications.

Decisions on permit applications shall be subject to administrative and judicial review in accordance with Part 787 of this chapter and sections 520, 525 and 526 of the Act.

§ 937.788 Permit reviews, revisions, and renewals, and transfer, sale and assignment of rights granted under permits.

Part 788 of this chapter, *Permit Reviews, Revisions, and Renewals, and Transfer, Sale, and Assignment of Rights Granted Under Permits,* shall apply to review, revision, and renewal of permits for surface coal mine operations, and to transfer, sale, and assignment of rights granted under permits.

§ 937.795 Small operator assistance.

Part 795 of this chapter, *Small Operator Assistance,* shall apply to any person making application for assistance under the small operator assistance program.

§ 937.800 General requirements for bonding of surface coal mining and reclamation operations.

Part 800 of this chapter, *General Requirements for Bonding of Surface Coal Mining and Reclamation Operations Under Regulatory Programs,* shall apply to all surface coal mining and reclamation operations.

§ 937.815 Performance standards—coal exploration.

Part 815 of this chapter, *Permanent Program Performance Standards—Coal Exploration,* shall apply to any person conducting coal exploration operations.

§ 937.816 Performance standards—surface mining activities.

Part 816 of this chapter, *Permanent Program Performance Standards—Surface Mining Activities,* shall apply to any person who conducts surface coal mining and reclamation operations.

§ 937.817 Performance standards—underground mining activities.

Part 817 of this chapter, *Permanent Program Performance Standards—Underground Mining Activities,* shall apply to any person who conducts underground mining operations.

§ 937.818 Special performance standards—concurrent surface and underground mining.

Part 818 of this chapter, *Special Permanent Program Performance Standards—Concurrent Surface and Underground Mining,* shall apply to any person who conducts combined surface and underground mining operations.

§ 937.819 Special performance standards—auger mining.

Part 819 of this chapter, *Special Permanent Program Performance Standards—Auger Mining,* shall apply to any person who conducts surface coal mining operations which include auger mining.

§ 937.823 Special performance standards—operations on prime farmland.

Part 823 of this chapter, *Special Permanent Program Performance Standards—Operations on Prime Farmland,* shall apply to any person who conducts surface coal mining and reclamation operations on prime farmlands.

§ 937.824 Special performance standards—mountaintop removal.

Part 824 of this chapter, *Special Permanent Program Performance Standards—Mountaintop Removal,* shall apply to any person who conducts surface coal mining operations constituting mountaintop removal mining.

§ 937.826 Special performance standards—operations on steep slopes.

Part 826 of this chapter, *Special Permanent Program Performance Standards—Operations on Steep Slopes,* shall apply to any person who conducts surface coal mining and reclamation operations on steep slopes.

§ 937.827 Special performance standards—coal processing plants and support facilities not located at or near the minesite or not within the permit area for a mine.

Part 827 of this chapter, *Special Permanent Program Performance Standards—Coal Processing plants and Support Facilities Not Located at or Near the Minesite or Not Within the Permit Area for a Mine,* shall apply to any person who conducts surface coal mining and reclamation operations which include the operation of coal processing plants and support facilities not located at or near the minesite or not within the permit area for a mine.

§ 937.828 Special performance standards—in situ processing.

Part 828 of this chapter, *Special Permanent Program Performance Standards—In Situ Processing,* shall apply to any person who conducts in situ processing activities.

§ 937.842 Federal inspections.

(a) Part 842 of this chapter, *Federal Inspections,* shall apply to all exploration and surface coal mining and reclamation operations.

(b) OSM will furnish a copy of each inspection report regarding inspections conducted pursuant to this subpart to the Oregon Department of Geology and Mineral Industries.

§ 937.843 Federal enforcement.

(a) Part 843 of this chapter, *Federal Enforcement,* shall apply when enforcement action is required for violations on surface coal mining and reclamation operations.

(b) OSM will furnish a copy of each enforcement action document and order to show cause issued pursuant to this subpart to the Oregon Department of Geology and Mineral Industries.

§ 937.845 Civil penalties.

Part 845 of this chapter, *Civil Penalties,* shall apply when civil penalties are assessed for violations on surface mining and reclamation operations.

§ 937.955 Certification of blasters.

Part 955 of this chapter, *Certification of Blasters in Federal Program States and on Indian Lands,* shall apply to the training, examination and certification of blasters for surface coal mining and reclamation operations.

[51 FR 19462, May 29, 1986]

PART 938—PENNSYLVANIA

Sec.

938.1 Scope.
938.10 State regulatory program approval.
938.11 Conditions of State regulatory program approval.
938.15 Approval of regulatory program amendments.
938.16 Required program amendments.
938.20 Approval of the Pennsylvania abandoned mine reclamation plan.

AUTHORITY: Pub. L. 95-87, Surface Mining Control and Reclamation Act of 1977, (30 U.S.C. 1201 et seq.)

§ 938.1 Scope.

This part contains all rules applicable only within Pennsylvania that have been adopted under the Surface Mining Control and Reclamation Act of 1977.

[47 FR 33079, July 30, 1982]

§ 938.10 State regulatory program approval.

The Pennsylvania state program as submitted on February 29, 1980, as amended on June 9, 1980, as resubmitted on January 25, 1982, and amended on April 9, 1982, and May 5, 1982, is conditionally approved, effective July 31, 1982. Beginning on that date, the Department of Environmental Resources shall be deemed the regulatory authority in Pennsylvania for all surface coal mining and reclamation operations and for all exploration operations on non-Federal and non-Indian lands. Only surface coal mining and reclamation operations on non-Federal and non-Indian lands shall be subject to the provisions of the Pennsylvania permanent regulatory program. Copies of the approved program, together with copies of the letter of the Department of Environmental Resources agreeing to the conditions in 30 CFR 938.11, are available at:

Pennsylvania Department of Environmental Resources, Fulton Bank Building, Tenth Floor, Third and Locust Streets, Harrisburg, Pennsylvania 17120; Telephone: (717) 787-4686

Office of Surface Mining, 100 Chestnut Street, Suite 300, Harrisburg, Pennsylvania 17101; Telephone: (717) 782-4036

Office of Surface Mining, Room 5315, 1100 "L" Street, NW., Washington, D.C. 20240; Telephone: (202) 343-7896

[47 FR 33079, July 30, 1982]

§ 938.11 Conditions of State regulatory program approval.

The approval of the Pennsylvania state program is subject to the Commonwealth revising its program to correct the deficiences listed in this section. The program revisions may be made, as appropriate, to the statutes, the regulations, the program narrative, or the Attorney General's opinion. This section indicates, for the general guidance of the Commonwealth, the component of the program to which the Secretary recommends the change be made.

(a)—(h) [Reserved]

(i) Termination of the approval found in § 938.10 will be initiated on August 1, 1983, unless Pennsylvania submits to the Secretary by that date, copies of enacted laws, or other program amendments providing for the award of costs and expenses which amendments are no less effective than 30 CFR 840.15 and in accordance with section 525(e) of SMCRA.

[47 FR 33079, July 30, 1982, as amended at 48 FR 13417, Mar. 31, 1983; 48 FR 45391, Oct. 5, 1983; 49 FR 20492, May 15, 1984; 49 FR 27319, July 3, 1984; 51 FR 18321, May 19, 1986]

§ 938.15 Approval of regulatory program amendments.

(a) The following amendments are approved effective October 5, 1983. Revisions submitted on April 26, 1983, and May 12, 1983 requiring certain information for certain permit applications in the form of instructions to operators as follows: (1) Bureau of Water Quality Management Underground Mine/Coal preparation Plant Permit Application Instructions, (2) Bituminous Underground Mining Operation Permit/Manual, (3) Coal Refuse Disposal Permit Application, (4) Anthracite Coal Refuse Disposal Permit Application, (5) Anthracite Bank Removal and Reclamation Permit Application, (6) Anthracite Surface Mine Permit Application, (7) Anthracite Underground Mining Operation Permit

Application/Manual and (8) Memorandum of Understanding between the Pennsylvania Department of Environmental Resources and the Pennsylvania Museum and Historical Commission.

(b) The following amendment is approved effective on Janaury 4, 1984, Order announcing the suspension of 25 PA Code Chapter 89.143(2)(iii) (A), (B), (C), and (D); 89.143(4); 89.144(b)(3); 89.145 (a)(4) and (b); 89.145(d); 89.146(e); and 89.147(a) by publication in the *Pennsylvania Bulletin, Vol. 13, No. 27*, dated July 2, 1983.

(c) The following amendment is approved effective on March 20, 1984, Pennsylvania policy statement submitted to OSM January 17, 1984, titled: (1) Citizen Complaint Procedures, (2) Department of Environmental Resources Inspection and Enforcement Policy for Mining Operations and (3) Civil Penalty Program.

(d) The following amendments are approved effective on May 15, 1984: Revisions to Title 25 Pennsylvania Code submitted on October 31, 1983: §§ 86.5, 86.38(b), 86.112(b), 86.134(c), 87.1, 87.112(c)(1), (2), 87.112(d), 87.112(e), 87.138, 87.144, 87.175, 89.86(a)(1), 89.161, 89.162, 89.163, 90.1, 90.112(c), 90.112(d), and 90.112(e).

(e) The following amendments are approved effective on July 3, 1984: Revisions to Title 25, Pennsylvania Code, submitted on October 31, 1983 identified as Chapter 86.211 and an addendum to the DER Inspection and Enforcement Policy for Mining Operations.

(f) The following amendments are approved effective November 27, 1984: Subchapters A, B, C, D and F of chapter 88 of Title 25 as submitted to OSM by Pennsylvania on March 30, 1984.

(g) The following amendment submitted to OSM on March 2, 1984, as modified on October 10, 1984, is approved effective April 4, 1985. Pennsylvania's blaster training, examination and certification program, as contained in Chapter 210, Subchapter A, of Title 25 of the Pennsylvania Code, and all other items as submitted by Pennsylvania on March 2, 1984, and modified on October 10, 1984, with the exception of Chapter 211 of Title 25 of the Pennsylvania Code.

(h) The following amendment submitted to OSM on April 19, 1985 is approved effective August 15, 1985: Amendment to Pennsylvania's blaster certification program, as contained in the Pennsylvania Department of Environmental Resources' policy statement as submitted by Pennsylvania on April 19, 1985.

(i) The following amendment submitted to OSM on April 18, 1985 is approved effective November 4, 1985. Amendment to Pennsylvania's subsidence control regulations, as contained in 25 Pennsylvania Code Chapter 89, Subchapter F.

(j) The following amendment submitted to OSMRE on September 5, 1985 is approved effective February 19, 1986: Act 158 of 1984; Subchapter F of Chapter 87 and Subchapter G of Chapter 88 of the Pennsylvania code of regulations; letters from the Pennsylvania Deputy General Counsel and the First Deputy Attorney General to Rebecca W. Hanmer, Director, Office of Water Enforcement Permits, U.S. EPA, dated July 8, 1985, and August 19, 1985, respectively.

(k) Amendments to the following sections of the Pennsylvania Department of Environmental Resources regulations as submitted to OSMRE on November 2, 1984, as clarified by the State's letter to OSMRE dated September 5, 1985, are approved effective May 19, 1986.

Regulations of the Department of Environmental Resources

Chapter 86

86.37(a)(13)
86.171(e)(12)
86.172(d)(2)(iii)

Chapter 88

88.1—Definitions for "cropland," historically used for cropland," "prime farmland," and "soil survey".
88.24(b)(4)—deleted
88.30(a) and (a)(1)
88.31(a)(7)
88.32—Subject to the required amendments set forth under 938.16(c) and (d)
88.61—Subject to the required amendment set forth under 938.16(e)
88.129—Subject to the required amendment set forth under 938.16(f)
88.134 (a) and (e)
88.135(c)(1), (f)(2) and (h)

88.136(a) and (c)
88.137(18 and (19)
88.217—Subject to the required amendment set forth under 938.16(f)
88.330—Subject to the required amendment set forth under 938.16(f) 88.381(b)(2), (c)(6), (c)(8) and (c)(9)
88.491(i)(1), (i)(13), (i)(22), (i)(23), (j), (k)—to the required amendments set forth under 938.16(d) and (f)
88.492(m)
88.493(8)

[49 FR 45391, Nov. 5, 1983, as amended at 49 FR 380, Jan. 4, 1984; 49 FR 10258, Mar. 20, 1984; 49 FR 20492, May 15, 1984; 49 FR 27319, July 3, 1984; 49 FR 46546, Nov. 27, 1984; 50 FR 13317, Apr. 4, 1985; 50 FR 32849, Aug. 15, 1985; 50 FR 45823, Nov. 4, 1985; 51 FR 7785, Mar. 6, 1986; 51 FR 18321, May 19, 1986]

§ 938.16 Required program amendments.

Pursuant to 30 CFR 732.17, Pennsylvania is required to submit the following proposed program amendments by the dates specified.

(a) [Reserved]

(b) Within 12 months following promulgation of a revised Federal rule, Pennsylvania shall amend its program no less effective than 30 CFR 817.121(c)(2), to require an operator to correct any material damage resulting from subsidence caused to any structures or facilities by repairing the damage or compensating the owner.

(c) By January 31, 1987, Pennsylvania shall amend its program regulations to be consistent with the Federal regulations at 30 CFR Part 823 as remanded by the U.S. District Court for the District of Columbia on October 1, 1984, by deleting the language at PA 88.32(b)(4) which provides an exemption to the prime farmland requirements if "the area of prime farmland is minimal in size (less than 5 acres) and has been or will be in use for an extended period of time (more than 10 years)."

(d) By January 31, 1987, Pennsylvania shall amend its program regulations at 88.32(e) and 88.491(k)(4) or otherwise amend its program to be no less effective than 30 CFR 785.17(c)(1)(ii) in requiring approval by the U.S. Department of Agriculture Soil Conservation Service of alternative soil profile descriptions for prime farmland soils included in the permit application.

(e) By January 31, 1987, Pennsylvania shall amend its program regulations at 88.61 or otherwise amend its program to be consistent with section 510(d) of SMCRA to: (1) Establish criteria for evaluating the applicant's operation and reclamation plan to determine whether the productivity standard for mined prime farmland set forth under Chapter 88 can be achieved following mining; (2) require the applicant to submit a plan to establish his technological capability to comply with the requirements for restoring prime farmland productivity; and (3) require the applicant to submit information on productivity prior to mining.

(f) By January 31, 1987, Pennsylvania shall amend its regulations at 88.129(f)(1) and (2) and the corresponding provisions under Chapter 88, Subchapters C, D, and F (88.217, 88.330 and 88.491) or otherwise amend its program to be consistent with section 510(d) of SMCRA by requiring that the restoration of prime farmland soil productivity shall be determined on the basis of measurement of crop yields.

[50 FR 32849, Aug. 15, 1985 and 50 FR 45823, Nov. 4, 1985, as amended at 51 FR 18321, May 19, 1986]

§ 938.20 Approval of the Pennsylvania Abandoned Mine Land Reclamation Plan.

The Pennsylvania Abandoned Mine Land Reclamation Plan as submitted on November 3, 1980, is approved. Copies of the approved Plan are available at the following locations:

Department of Environmental Resources, Office of Resources Management, Third and Reilly Street, Evangelical Press Building, 2nd Floor, Harrisburg, Pennsylvania 17120

Office of Surface Mining Reclamation and Enforcement, 603 Morris Street, Charleston, West Virginia 25311

Office of Surface Mining Reclamation and Enforcement, Administrative Record Room 5315, 1100 "L" Street, N.W., Washington, D.C. 20240.

[47 FR 33083, July 30, 1982]

PART 939—RHODE ISLAND

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939.700 Rhode Island Federal program.
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939.707 Exemption for coal extraction incident to Government-financed highway or other construction.
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939.800 General requirements for bonding of surface coal mining and reclamation operations.
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939.823 Special performance standards—operations on prime farmland.
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939.827 Special performance standards—coal processing plants and support facilities not located at or near the minesite or not within the permit area for a mine.
939.828 Special performance standards—in situ processing.
939.842 Federal inspections.
939.843 Federal enforcement.
939.845 Civil penalties.
933.955 Certification of blasters.

AUTHORITY: Pub. L. 95-87, Surface Mining Control and Reclamation Act of 1977, 91 Stat. 445 *et seq.* (30 U.S.C. 1201 *et seq.*)

SOURCE: 48 FR 40995, Sept. 12, 1983, unless otherwise noted.

§ 939.700 Rhode Island Federal program.

(a) This part contains all rules that are applicable to surface coal mining and reclamation operations in Rhode Island which have been adopted under the Surface Mining Control and Reclamation Act of 1977.

(b) The rules in this part cross-reference pertinent parts of the permanent program regulations in this chapter. The full text of a rule is in the permanent program rule cited under the relevant section of the Rhode Island Federal program.

(c) The rules in this part apply to all surface coal mining and reclamation operations in Rhode Island conducted on non-Federal and non-Indian lands. The rules in Subchapter D of this chapter apply to operations on Federal lands in Rhode Island.

(d) The information collection requirements contained in this part do not require approval by the Office of Management and Budget under 44 U.S.C. 3507 because there are fewer than ten respondents annually.

(e) The following provisions of Rhode Island laws provide, where applicable, for more stringent environmental control and regulation of surface coal mining and reclamation operations than do the provisions of the Act and the regulations in this chapter. Therefore, pursuant to Section 505(b) of the Act, they shall not be construed to be inconsistent with the Act:

(1) R.I. General Laws Sections 23-19.1-1 to 23-19.1-22, regulating treatment, disposal, and transportation of hazardous wastes within the State of Rhode Island.

(2) R.I. General Laws Sections 46-12-1 to 46-12-37, controlling the pollution of any of the State's waterways.

(f) There are no Rhode Island laws that generally interfere with the achievement of the purposes and requirements of the Act and which must be superseded and preempted pursuant to Section 504(g). Some Rhode Island laws may in an individual situation interfere with the achievement of the purposes and requirements of the Act and may be preempted and superseded with respect to the performance standards of §§ 939.815 through 939.828 as they affect a particular coal exploration or surface mining operation by publication of a notice to that effect in the FEDERAL REGISTER.

§ 939.701 General.

Sections 700.5, 700.11, 700.12, 700.13, 700.14, 700.15 and Part 701 of this chapter shall apply to surface coal mining and reclamation operations in Rhode Island.

§ 939.707 Exemption for coal extraction incident to Government-financed highway or other construction.

Part 707 of this chapter, *Exemption for Coal Extraction Incident to Government-Financed Highway or Other Construction*, shall apply to surface coal mining and reclamation operations.

§ 939.761 Areas designated unsuitable for surface coal mining by Act of Congress.

Part 761 of this chapter, *Areas Designated by Act of Congress*, shall apply to surface coal mining and reclamation operations.

§ 939.762 Criteria for designating areas as unsuitable for surface coal mining operations.

Part 762 of this chapter, *Criteria for Designating Areas Unsuitable for Surface Coal Mining Operations*, shall apply to surface coal mining and reclamation operations.

§ 939.764 Process for designating areas unsuitable for surface coal mining operations.

Part 764 of this chapter, *State Processes for Designating Areas Unsuitable for Surface Coal Mining Operations*, pertaining to petitioning, initial processing, hearing requirements, decisions, data base and inventory systems, public information, and regulatory responsibilities shall become applicable in Rhode Island on May 28, 1983.

§ 939.770 General requirements for permits and exploration procedures.

(a) Part 770 of this chapter, *General Requirements for Permit Systems Under State Programs*, shall apply to coal exploration and surface coal mining and reclamation operations.

(b) No person shall conduct coal exploration which results in the removal of more than 250 tons of coal nor shall any person conduct surface coal mining operations without a permit issued by the Secretary pursuant to 30 CFR Part 770 and permits issued pursuant to State law, including: the Wetlands Protection Act (R.I. General Laws Section 2-1-22); Chapter 20 of the Waters and Navigation Act (petitions for ditches and drains) (R.I. General Laws Section 46-20-1 *et seq.*); the Coastal Resources Management Council Act of 1971 (R.I. General Laws Section 46-23-6); the Rhode Island Clean Air Act (R.I. General Laws Section 23-23-15); the Rhode Island Hazardous Waste Management Act of 1978 (R.I. General Laws Section 23-19.1-11 *et seq.*); the Rhode Island Act for Inspection of Dams and Reservoirs (R.I. General Laws Section 46-19-1 *et seq.*); and Chapter 23-28.28 of Rhode Island's Health and Safety Code (R.I. General Laws Section 23-28.28-1, *et seq.*, permits for blasting), and an order of approval authorizing discharge of sewage into waterways within the State and modification or operation of sewage disposal systems if applicable (R.I. General Laws Sections 46-12-1 to 46-12-37). The permit issued by the Secretary shall incorporate the requirements of the Rhode Island Historical Zoning Act of 1954, as amended (R.I. General Laws Section 45-24.1-1 *et seq.*) and the Rhode Island Antiquities Act of 1974 (R.I. General Laws Section 42-45.1-1 *et seq.*).

(c) The Secretary shall coordinate review and issuance of a coal exploration or surface coal mining permit with the review and issuance of other Federal and State permits listed in this Section and 30 CFR Part 770.

§ 939.771 General requirements for permits and permit applications.

(a) Part 771 of this chapter, *General Requirements for Permits and Permit Applications*, shall apply to any person who makes application for a permit to conduct surface coal mining and reclamation operations.

(b) A person who wishes to conduct new surface coal mining and reclamation operations or who wishes a revision of his permit shall file a complete application at least 12 months prior to the date upon which permit issuance or revision is desired, and shall pay to the Secretary a permit fee in accordance with § 736.25 of this chapter.

§ 939.776 General requirements for coal exploration.

(a) Part 776 of this chapter, *General Requirements for Coal Exploration*, shall apply to any person who conducts or seeks to conduct coal exploration operations.

(b) The Office shall make every effort to act on an exploration application within 60 days of receipt or such longer time as may be reasonable under the circumstances. If additional time is needed, OSM shall notify the applicant that the application is being reviewed, but that more time is necessary to complete such review, setting forth the reasons and the additional time that is needed.

(c) Notwithstanding the provisions of paragraphs (a) and (b) of this section, any person who intends to conduct coal exploration shall, prior to conducting the exploration, file with the regulatory authority a written notice of intention to explore including:

(1) The name, address, and telephone number of the person seeking to explore;

(2) The name, address, and telephone number of the representative who will be present at and responsible for conducting the exploration activities;

(3) A precise description and map, at a scale of 1:24,000 or larger, of the exploration area;

(4) A statement of the period of intended exploration;

(5) If the surface is owned by a person other than the person who intends to explore, a description of the basis upon which the person will explore claims the right to enter such area for the purpose of conducting exploration and reclamation; and

(6) A description of the practices proposed to be followed to protect the environment from adverse impacts as a result of the exploration activities.

§ 939.778 Surface mining permit applications—minimum requirements for legal, financial, compliance, and related information.

Part 778 of this chapter, *Surface Mining Permit Applications—Minimum Requirements for Legal, Financial, Compliance, and Related Information*, shall apply to any person who makes application for a permit to conduct surface coal mining and reclamation operations.

§ 939.779 Surface mining permit applications—minimum requirements for information on environmental resources.

Part 779 of this chapter, *Surface Mining Permit Applications—Minimum Requirements for Information on Environmental Resources*, shall apply to any person who makes application to conduct surface coal mining and reclamation operations.

§ 939.780 Surface mining permit applications—minimum requirements for reclamation and operations plan.

(a) Part 780 of this chapter, *Surface Mining Permit Applications—Minimum Requirements for Reclamation and Operation Plan*, shall apply to any person who makes application to conduct surface coal mining and reclamation operations.

(b) The applicant for a permit shall demonstrate compliance with Rhode Island air quality control laws (R.I. General Laws Section 23-23-1 *et seq.*) by obtaining an order of approval from the Director of the Department of Environmental Management for any facility with the potential to emit one ton per year or more of any air contaminant pursuant to R.I. General Laws Section 23-23-15.

§ 939.782 Underground mining permit applications—minimum requirements for legal, financial, compliance, and related information.

Part 782 of this chapter, *Underground Mining Permit Applications—Minimum Requirements for Legal, Financial, Compliance, and Related Information,* shall apply to any person who makes application for a permit to conduct underground coal mining operations.

§ 939.783 Underground mining permit applications—minimum requirements for information on environmental resources.

Part 783 of this chapter, *Underground Mining Permit Applications—Minimum Requirements for Information on Environmental Resources,* shall apply to any person who submits an application to conduct underground coal mining operations.

§ 939.784 Underground mining permit applications—minimum requirements for reclamation and operation plan.

Part 784 of this chapter, *Underground Mining Permit Applications—Minimum Requirements for Reclamation and Operation Plan,* shall apply to any person who makes application to conduct underground coal mining.

§ 939.785 Requirements for permits for special categories of mining.

Part 785 of this chapter, *Requirements for Permits for Special Categories of Mining,* shall apply to each person who makes application for a permit to conduct certain categories of surface coal mining and reclamation operations as specified therein.

§ 939.786 Review, public participation, and approval or disapproval of permit applications and permit terms and conditions.

Part 786 of this chapter, *Review, Public Participation, and Approval or Disapproval of Permit Applications and Permit Terms and Conditions,* shall apply to the review of applications made by any person for surface coal mining and reclamation operations.

§ 939.787 Administrative and judicial review of decisions on permit applications

Decisions on permit applications shall be subject to administrative and judicial review in accordance with Part 787 of this chapter and Sections 520, 525 and 526 of the Act.

§ 939.788 Permit reviews, revisions, and renewals, and transfer, sale, and assignment of rights granted under permits.

Part 788 of this chapter, *Permit Reviews, Revisions, and Renewals, and Transfer, Sale, and Assignment of Rights Granted Under Permits,* shall apply to review, revision, and renewal of permits for surface coal mine operations, and to transfer, sale, and assignment of rights granted under permits.

§ 939.795 Small operator assistance.

Part 795 of this chapter, *Small Operator Assistance,* shall apply to any person making application for assistance under the small operator assistance program.

§ 939.800 General requirements for bonding of surface coal mining and reclamation operations.

Part 800 of this chapter, *General Requirements for Bonding of Surface Coal Mining and Reclamation Operations Under Regulatory Programs,* shall apply to all surface coal mining and reclamation operations.

§ 939.815 Performance standards—Coal exploration.

Part 815 of this chapter, *Permanent Program Performance Standards—Coal Exploration,* shall apply to any person conducting coal exploration operations.

§ 939.816 Performance standards—surface mining activities.

Part 816 of this chapter, *Permanent Program Performance Standards—Surface Mining Activities*, shall apply to any person who conducts surface coal mining and reclamation operations.

§ 939.817 Performance standards—underground mining activities.

Part 817 of this chapter, *Permanent Program Performance Standards—Underground Mining Activities*, shall apply to any person who conducts underground coal mining operations.

§ 939.819 Special performance standards—auger mining.

Part 819 of this chapter, *Special Permanent Program Performance Standards—Auger Mining*, shall apply to any person who conducts surface coal mining operations which include auger mining.

§ 939.823 Special performance standards—operations on prime farmland.

Part 823 of this chapter, *Special Permanent Program Performance Standards—Operations on Prime Farmland*, shall apply to any person who conducts surface coal mining and reclamation operations on prime farmlands.

§ 939.824 Special performance standards—mountaintop removal.

Part 824 of this chapter, *Special Permanent Program Performance Standards—Mountaintop Removal*, shall apply to any person who conducts surface coal mining operations constituting mountaintop removal mining.

§ 939.826 Special performance standards—operations on steep slopes.

Part 826 of this chapter, *Special Permanent Program Performance Standards—Operations on Steep Slopes*, shall apply to any person who conducts surface coal mining and reclamation operations on steep slopes.

§ 939.827 Special performance standards—coal processing plants and support facilities not located at or near the minesite or not within the permit area for a mine.

Part 827 of this chapter, *Special Permanent Program Performance Standards—Coal Processing Plants and Support Facilities Not Located at or Near the Minesite or Not Within the Permit Area for a Mine*, shall apply to any person who conducts surface coal mining and reclamation operations which include the operation of coal processing plants and support facilities not located at or near the minesite or not within the permit area for a mine.

§ 939.828 Special performance standards—in situ processing.

Part 828 of this chapter, *Special Permanent Program Performance Standards—In Situ Processing*, shall apply to any person who conducts in situ processing activities.

§ 939.842 Federal inspections.

(a) Part 842 of this chapter, *Federal Inspections*, shall apply to all coal exploration and surface coal mining and reclamation operations.

(b) The Secretary will furnish copies of inspection reports and reports of any enforcement action taken to the Rhode Island Department of Environmental Management upon request.

§ 939.843 Federal enforcement.

(a) Part 843 of this chapter, *Federal Enforcement*, shall apply when enforcement action is required for violations on coal exploration or surface coal mining and reclamation operations.

(b) The Office will furnish a copy of any order to show cause to the Rhode Island Department of Environmental Management upon request.

§ 939.845 Civil penalties.

Part 845 of this chapter, *Civil Penalties*, shall apply when civil penalties are assessed for violations on surface coal mining and reclamation operations.

§ 939.955 Certification of blasters.

Part 955 of this chapter, *Certification of Blasters in Federal Program States and on Indian Lands*, shall apply to the training, examination and certification of blasters for surface coal mining and reclamation operations.

[51 FR 19462, May 29, 1986]

PART 941—SOUTH DAKOTA

Sec.

941.700 South Dakota Federal program.
941.701 General.
941.707 Exemption for coal extraction incident to Government-financed highway or other construction.
941.761 Areas designated unsuitable for surface coal mining by act of Congress.
941.762 Criteria for designating areas as unsuitable for surface coal mining operations.
941.764 Process for designating areas unsuitable for surface coal mining operations.
941.770 General requirements for permits and exploration procedures.
941.771 General requirements for permits and permit applications.
941.776 General requirements for coal exploration.
941.778 Surface mining permit applications—minimum requirements for legal, financial, compliance, and related information.
941.779 Surface mining permit applications—minimum requirements for information on environmental resources.
941.780 Surface mining permit applications—minimum requirements for reclamation and operation plan.
941.782 Underground mining permit applications—minimum requirements for legal, financial, compliance, and related information.
941.783 Underground mining permit applications—minimum requirements for information on environmental resources.
941.784 Underground mining permit applications—minimum requirements for reclamation and operation plan.
941.785 Requirements for permits for special categories of mining.
941.786 Review, public participation, and approval or disapproval of permit applications and permit terms and conditions.
941.787 Administrative and judicial review of decisions on permit applications.
941.788 Permit reviews, revisions, and renewals, and transfer, sale, and assignment of rights granted under permits.
941.795 Small operator assistance.

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941.800 General requirements for bonding of surface coal mining and reclamation operations.
941.815 Performance standards—coal exploration.
941.816 Performance standards—surface mining activities.
941.817 Performance standards—underground mining activities.
941.818 Special performance standards—concurrent surface and underground mining.
941.819 Special performance standards—auger mining.
941.822 Special performance standards—operations in alluvial valley floors.
941.823 Special performance standards—operations on prime farmland.
941.824 Special performance standards—mountaintop removal.
941.826 Special performance standards—operations on steep slopes.
941.827 Special performance standards—coal processing plants and support facilities not located at or near the minesite or not within the permit area for a mine.
941.828 Special performance standards—in situ processing.
941.842 Federal inspections.
941.843 Federal enforcement.
941.845 Civil penalties.
941.955 Certification of blasters.

Authority: Pub. L. 95-87, The Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201 *et seq.*, 91 Stat. 445.

Source: 48 FR 16823, Apr. 19, 1983, unless otherwise noted.

§ 941.700 South Dakota Federal program.

(a) This part contains all rules that are applicable to surface coal mining operations in South Dakota which have been adopted under the Surface Mining Control and Reclamation Act of 1977.

(b) The rules in this part cross-reference pertinent parts of the permanent program regulations in this chapter. The full text of a rule is in the permanent program rule cited under the relevant section of the South Dakota Federal program.

(c) The rules in this part apply to all surface coal mining operations in South Dakota conducted on non-Federal and non-Indian lands. The rules in Subchapter D of this chapter apply to operations on Federal lands in South Dakota.

(d) The information collection requirements contained in §§ 941.764, 941.770, 941.771, 941.795, and 941.800 do not require approval by the Office of Management and Budget under 44 U.S.C. 3507 because there are fewer than ten respondents annually.

(e) The following provisions of South Dakota laws provide, where applicable, for more stringent environmental control and regulation of surface coal mining operations than do the provisions of the Act and the regulations in this chapter. Therefore, pursuant to section 505(b) of the Act, they shall not be construed to be inconsistent with the Act:

(1) South Dakota Compiled Laws Annotated (S. D. Comp. Laws Ann.) Chap. 45-6B, section 33(1)-(5) on lands unsuitable for mining.

(2) S. D. Comp. Laws Ann. Chap. 45-6C, sections 16, 19, 27, and 28.

(3) Weed Control, S. D. Comp. Laws Ann. Chap. 38-22.

(4) Protection of fishing waters, S. D. Comp. Laws Ann. Chap. 41-13.

(5) Remedies for protection of the environment, S. D. Comp. Laws Ann. Chap. 34A-10.

(6) Air pollution control, S. D. Comp. Laws Ann. Chap. 34A-1.

(7) Water pollution control, S. D. Comp. Laws Ann. Chap. 34A-2.

(8) Solid waste disposal, S. D. Comp. Laws Ann. Chap. 34A-6.

(9) Groundwater, S. D. Comp. Laws Ann. Chap. 46-6.

(f) The following are South Dakota laws that interfere with the achievement of the purposes and requirements of the Act and are, in accordance with section 504(g) of the Act, preempted and superseded with respect to surface coal mining, except to the extent that they regulate surface coal mining operations which affect two acres or less, or which otherwise are not regulated by the Surface Mining Control and Reclamation Act.

(1) S. D. Comp. Laws Ann. Chap. 45-6B, except with respect to the criteria for designating lands unsuitable for mining, section 33(1)-(5).

(2) S. D. Comp. Laws Ann. Chap. 45-6C, except with respect to the requirements to consult with the owner of surface lands to be explored and the right of the owner to establish reasonable restrictions on exploration travel (section 16), the requirement to post an exploration reclamation bond (section 19), the prohibition of explosives use in exploration within one-half mile of a flowing water well or a domestic water well without the owner's permission (section 27), and the requirement to cap, plug, and seal all exploration test holes (section 28).

(g) The Secretary may grant a limited variance from the performance standards of §§ 941.815 through 941.828 of this part if the applicant for coal exploration approval or a surface mining permit submitted pursuant to §§ 941.770 through 941.788 of this part demonstrates in the application that: (1) Such variance is necessary because of the unique nature of South Dakota's terrain, climate, biological, chemical, or other relevent physical conditions; and (2) the proposed alternative will achieve equal or greater environmental protection than does the performance requirement from which the variance is requested.

§ 941.701 General.

Sections 700.5, 700.11, 700.12, 700.13, 700.14, 700.15 and Part 701 of this chapter shall apply to surface coal mining operations in South Dakota.

§ 941.707 Exemption for coal extraction incident to Government-financed highway or other construction.

Part 707 of this chapter, *Exemption for Coal Extraction Incident to Government-Fiananced Highway or Other Construction*, shall apply to surface coal mining and reclamation operations.

§ 941.761 Areas designated unsuitable for surface coal mining by act of Congress.

Part 761 of this chapter, *Areas Designated by Act of Congress*, shall apply to surface coal mining and reclamation operations.

§ 941.762 Criteria for designating areas as unsuitable for surface coal mining operations.

Part 762 of this chapter, *Criteria for Designating Areas Unsuitable for Surface Coal Mining Operations*, shall apply to surface coal mine operations.

§ 941.764 Process for designating areas unsuitable for surface coal mining operations.

Part 764 of this chapter, *State Processes for Designating Areas Unsuitable for Surface Coal Mining Operations*, pertaining to petitioning, initial processing, hearing requirements, decisions, data base and inventory systems, public information, and regulatory responsibilities shall apply to surface coal mine operations beginning one year after the effective date of this program.

§ 941.770 General requirements for permits and exploration procedures.

(a) Part 770 of this chapter, *General Requirements for Permit Systems Under State Programs*, shall apply to surface coal mining and exploration operations.

(b) No person shall conduct coal exploration which results in the removal of more than 250 tons of coal, nor shall any person conduct surface coal mining operations without a permit issued by the Secretary pursuant to 30 CFR Part 770, and permits, leases and certificates required by the State of South Dakota including compliance with: (1) Air pollution control, S. D. Comp. Laws Ann. Chap. 34A-1; (2) water pollution control, S. D. Comp. Laws Ann. Chap. 34A-2; (3) and solid waste disposal, S. D. Comp. Laws Ann. Chap. 34A-6.

(c) No person shall be granted a permit to conduct exploration which results in the removal of more than 250 tons of coal or shall conduct surface coal mining unless that person has acquired all required permits, leases, and certificates listed in paragraph (b) of this section.

§ 941.771 General requirements for permits and permit applications.

(a) Part 771 of this chapter, *General Requirements for Permits and Permit Applications*, shall apply to any person who makes application for a permit to conduct surface coal mine operations.

(b) A person who wishes to conduct new surface coal mining and reclamation operations or who wishes a revision of his permit shall file a complete application at least 12 months prior to the date upon which permit issuance or revision is desired, and shall pay to the Secretary a permit fee in accordance with § 736.25 of this chapter.

§ 941.776 General requirements for coal exploration.

(a) Part 776 of this chapter, *General Requirements for Coal Exploration*, shall apply to any person who conducts or seeks to conduct coal exploration operations.

(b) The Office shall make every effort to act on an exploration application within 60 days of receipt or such longer time as may be reasonable under the circumstances. If additional time is needed, OSM shall notify the applicant that the application is being reviewed, but more time is necessary to complete such review, setting forth the reasons and the additional time that is needed.

§ 941.778 Surface mining permit applications—minimum requirements for legal, financial, compliance, and related information.

Part 778 of this chapter, *Surface Mining Permit Applications—Minimum Requirements for Legal, Financial, Compliance, and Related Information*, shall apply to any person who makes application for a permit to conduct surface coal mining and reclamation operations.

§ 941.779 Surface mining permit applications—minimum requirements for information on environmental resources.

Part 779 of this chapter, *Surface Mining Permit Applications—Minimum Requirements for Information on Environmental Resources*, shall apply to any person who makes application to conduct surface coal mining and reclamation operations.

§ 941.780 Surface mining permit applications—minimum requirements for reclamation and operation plan.

(a) Part 780 of this chapter, *Surface Mining Permit Applications—Minimum Requirements for Reclamation and Operation Plan*, shall apply to any person who makes application to conduct surface coal mining and reclamation operations.

(b) Each applicant for a permit shall demonstrate compliance with the South Dakota laws on air pollution, S. D. Comp. Laws Ann. Chap. 34A-1, water pollution control, S. D. Comp. Laws Ann. Chap. 34A-2, and solid waste disposal, S. D. Comp. Laws Ann. Chap. 34A-6.

§ 941.782 Underground mining permit applications—minimum requirements for legal, financial, compliance, and related information.

Part 782 of this chapter, *Underground Mining Permit Applications—Minimum requirements for Legal, Financial, Compliance, and Related Information,* shall apply to any person who makes application for a permit to conduct underground mining operations.

§ 941.783 Underground mining permit applications—minimum requirements for information on environmental resources.

Part 783 of this chapter, *Underground Mining Permit Applications—Minimum Requirements for Information on Environmental Resources,* shall apply to any person who submits an application to conduct underground mining operations.

§ 941.784 Underground mining permit applications—minimum requirements for reclamation and operation plan.

Part 784 of this chapter, *Underground Mining Permit Applications—Minimum Requirements for Reclamation and Operation Plan,* shall apply to any person who makes application to conduct underground mining.

§ 941.785 Requirements for permits for special categories of mining.

Part 785 of this chapter, *Requirements for Permits for Special Categories of Mining,* shall apply to each person who makes application for a permit to conduct certain categories of surface coal mining and reclamation operations.

§ 941.786 Review, public participation, and approval or disapproval of permit applications and permit terms and conditions.

Part 786 of this chapter, *Review, Public Participation, and Approval or Disapproval of Permit Applications and Permit Term and Conditions,* shall apply to the review of applications made by any person for surface coal mining and reclamation operations.

§ 941.787 Administrative and judicial review of decisions on permit applications.

Part 787 of this chapter, Administrative and Judicial Review of Decisions on Permit Applications, shall apply to the review of decisions on permit applications for surface coal mining and reclamation operations.

§ 941.788 Permit reviews, revisions, and renewals, and transfer, sale, and assignment of rights granted under permits.

Part 788 of this chapter, *Permit Reviews, Revisions, and Renewals, and Transfer, Sale, and Assignment of Rights Granted Under Permits,* shall apply to review, revision, and renewal of permits for surface coal mine operations, and to transfer, sale, and assignment of rights granted under permits.

§ 941.795 Small operator assistance.

Part 795 of this chapter, *Small Operator Assistance,* shall apply to any person making application for assistance under the small operator assistance program.

§ 941.800 General requirements for bonding of surface coal mining and reclamation operations.

Part 800 of this chapter, *General Requirements for Bonding of Surface Coal Mining and Reclamation Operations Under Regulatory Programs,* shall apply to all surface coal mining and reclamation operations.

§ 941.815 Performance standards—coal exploration.

Part 815 of this chapter, *Permanent Program Performance Standards—*

Coal Exploration, shall apply to any person conducting coal exploration operations.

§ 941.816 Performance standards—surface mining activities.

Part 816 of this chapter, *Permanent Program Performance Standards—Surface Mining Activities*, shall apply to any person who conducts surface coal mining and reclamation operations.

§ 941.817 Performance standards—underground mining activities.

Part 817 of this chapter, *Permanent Program Performance Standards—Underground Mining Activities*, shall apply to any person who conducts underground mining operations.

§ 941.818 Special performance standards—concurrent surface and underground mining.

Part 818 of this chapter, *Special Permanent Program Performance Standards—Concurrent Surface and Underground Mining*, shall apply to any person who conducts combined surface and underground mining operations.

§ 941.819 Special performance standards—auger mining.

Part 819 of this chapter, *Special Permanent Program Performance Standards—Auger Mining*, shall apply to any person who conducts surface coal mining operations which include auger mining.

§ 941.822 Special performance standards—operations in alluvial valley floors.

Part 822 of this chapter, *Special Permanent Program Performance Standards—Operations in Alluvial Valley Floors*, shall apply to any person who conducts surface coal mining and reclamation operations on alluvial valley floors.

§ 941.823 Special performance standards—operations on prime farmland.

Part 823 of this chapter, *Special Permanent Program Performance Standards—Operations on Prime Farmland*, shall apply to any person who conducts surface coal mining and reclamation operations on prime farmlands.

§ 941.824 Special performance standards—mountaintop removal.

Part 824 of this chapter, *Special Permanent Program Performance Standards—Mountaintop Removal*, shall apply to any person who conducts surface coal mining operations constituting mountaintop removal mining.

§ 941.826 Special performance standards—operations on steep slopes.

Part 826 of this chapter, *Special Permanent Program Performance Standards—Operations on Steep Slopes*, shall apply to any person who conducts surface coal mining and reclamation operations on steep slopes.

§ 941.827 Special performance standards—coal processing plants and support facilities not located at or near the minesite or not within the permit area for a mine.

Part 827 of this chapter, *Special Permanent Program Performance Standards—Coal Processing Plants and Support Facilities Not Located at or Near the Minesite or Not Within the Permit Area for a Mine*, shall apply to any person who conducts surface coal mining and reclamation operations which include the operation of coal processing plants and support facilities not located at or near the minesite or not within the permit area for a mine.

§ 941.828 Special performance standards—in situ processing.

Part 828 of this chapter, *Special Permanent Program Performance Standards—In Situ Processing*, shall apply to any person who conducts in situ processing activities.

§ 941.842 Federal inspections.

(a) Part 842 of this chapter, *Federal Inspections*, shall apply to all exploration and surface coal mining and reclamation operations.

(b) The Office will furnish a copy of any inspection report or enforcement action taken to the South Dakota Department of Water and Natural Resources upon request.

§ 941.843 Federal enforcement.

(a) Part 843 of this chapter, *Federal Enforcement*, shall apply when enforcement action is required for violations on surface coal mining and reclamation operations.

(b) The Office will furnish a copy of each enforcement action and order to show cause issued pursuant to this section to the South Dakota Department of Water and Natural Resources upon request.

§ 941.845 Civil penalties.

Part 845 of this chapter, *Civil Penalties*, shall apply when civil penalties are assessed for violations on surface coal mining and reclamation operations.

§ 941.955 Certification of blasters.

Part 955 of this chapter, *Certification of Blasters in Federal Program States and on Indian Lands*, shall apply to the training, examination and certification of blasters for surface coal mining and reclamation operations.

[51 FR 19462, May 29, 1986]

PART 942—TENNESSEE

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Authority: Pub. L. 95-87, The Surface Mining Control and Reclamation Act of 1977, (30 U.S.C. 1201 *et seq.*).

Source: 49 FR 38892, Oct. 1, 1984, unless otherwise noted.

§ 942.20 Approval of Tennessee reclamation plan for lands and waters affected by past coal mining.

The Tennessee Reclamation Plan, as submitted on March 24, 1982, is approved. Copies of the approved program are available at:

Office of Surface Mining Reclamation and Enforcement, 530 Gay Street, Suite 500, Knoxville, Tennessee 37902

State of Tennessee Department of Conservation, Division of Surface Mining and Reclamation, 305 West Springvale, Knoxville, Tennessee 37917

Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 5315, 1100 'L' Street, NW, Washington, D.C. 20240.

§ 942.700 Tennessee Federal program.

(a) This part contains all rules that are applicable to surface coal mining operations in Tennessee which have been adopted under the Surface Mining Control and Reclamation Act of 1977.

(b) Certain of the rules in this part cross-reference pertinent parts of the permanent program regulations in this chapter. The full text of a cross-referenced rule is in the permanent program rule cited under the relevant section of this part.

(c) This part applies to all surface coal mining operations in Tennessee conducted on non-Federal and non-Indian lands. To the extent required by Part 740 of this chapter, this part also applies to operations on Federal lands in Tennessee.

(d) The information collection requirements contained in this part have been approved by the office of Management and Budget under 44 U.S.C. 3507 and assigned the following clearance numbers: 1029-0007, 1029-0009, 1029-0032, 1029-0033, 1029-0034, 1029-0035, 1029-0036, 1029-0038, 1029-0039, 1029-0040, 1029-0041, 1029-0043, 1029-0047, 1029-0048, 1029-0049, 1029-0080.

§ 942.701 General.

(a)(1) Except as provided in paragraphs (a)(2) and (a)(3) of this section, §§ 700.5, 700.11, 700.12, 700.13, 700.14, 700.15 and Part 701 of this chapter shall apply to coal exploration and surface coal mining and reclamation operations.

(2) The definition of "support facilities" in § 701.5 of this chapter shall not apply to surface coal mining and reclamation operations.

(3) The definitions of "surface coal mining operations" in § 700.5, and "coal preparation or coal processing" and "coal preparation plant" in § 701.5 of this chapter shall include facilities which leach, chemically process, or physically process coal.

(b) Surface coal mining and reclamation operations in Tennessee which do not have a permanent program permit issued by the State of Tennessee prior to the effective date of this program, but which filed a permit application on a timely basis and were allowed to operate under the Tennessee State program, may continue to operate until the Office issues or denies a permit if they: (1) Comply with Subchapter B of this chapter until issuance or denial of a permit under this program; (2) authorize transfer to OSM of any permit application pending with the State regulatory authority; and (3) provide to the Office on a timely basis any requested additional information necessary to make a complete permit application.

(c) Persons engaged in underground mining activities which do not have and did not apply for a permanent program permit from the State of Tennessee prior to the effective date of this program, but which were allowed to operate under the Tennessee State program, may continue to operate beyond eight months after the effective date of this program if they: (1) Within two months of the effective date of this program apply to OSM for a permit; (2) comply with Subchapter B of this chapter until issuance or denial of a permit under this program; and (3) provide to the Office on a timely basis any requested additional information necessary to make a complete permit application.

(d) Persons operating facilities which leach, chemically process, or physically process coal which do not have a permanent program permit from the State of Tennessee prior to the effective date of this program, may continue to operate beyond eight months after the effective date of this program if they: (1) Within two months of the effective date of this program apply to OSM for a permit; (2) comply with Subchapter B of this chapter until issuance or denial of a permit under this program; and (3) provide to the Office on a timely basis any requested additional information necessary to make a complete permit application.

(e) Records required by § 700.14 of this chapter to be made available locally to the public shall be retained at OSM's Knoxville Field Office.

§ 942.707 Exemption for coal extraction incident to government-financed highway or other construction.

Part 707 of this chapter, Exemption for Coal Extraction Incident to Government-Financed Highway or Other Construction, shall apply to surface coal mining and reclamation operations.

§ 942.761 Areas designated unsuitable for surface coal mining by act of Congress.

Part 761 of this chapter, Areas Designated by Act of Congress, shall apply to surface coal mining and reclamation operations.

§ 942.762 Criteria for designating areas as unsuitable for surface coal mining operations.

(a) Part 762 of this chapter, Criteria for Designating Areas as unsuitable for Surface Coal Mining Operations, shall apply to surface coal mining and reclamation operations.

(b) In addition to the lands defined as fragile lands in § 762.5 of this chapter, the Office in evaluating any petition to designate lands as unsuitable or to terminate such designation will consider lands included on the Tennessee Natural Areas Registry under Tennessee Code Annotated (TCA) section 11-14-112, Natural Areas designated by the Tennessee General Assembly under TCA 11-14-108, areas adjoining Tennessee Scenic Rivers designated under TCA 11-13-101, and Scenic Trails designated under TCA 11-11-101.

§ 942.764 Process for designating areas unsuitable for surface coal mining operations.

(a) Part 764 of this chapter, State Process for Designating Areas Unsuitable for Surface Coal Mining Operations, shall apply to surface coal mining and reclamation operations.

(b) The Secretary shall notify the Tennessee Department of Health and Environment of any area designated unsuitable or for which such designation has been requested or terminated.

(c) Unsuitability designations made under the Tennessee State program shall remain valid unless and until terminated.

§ 942.772 Requirements for coal exploration.

(a) Part 772 of this chapter, Requirements for Coal Exploration, shall apply to any person who conducts coal exploration, except for § 772.11(a) regarding written notice of intention to explore, for which paragraph (b) of this section substitutes.

(b) *Notice of intent.* Any person who intends to conduct coal exploration operations outside a permit area during which 250 tons or less of coal will be removed and which may: (1) Substantially disturb the natural land surface, or (2) involve the use of mechanized earth moving equipment or explosives, shall, before conducting such exploration, file with the regulatory authority a written notice of intention to explore.

§ 942.773 Requirements for permits and permit processing.

(a) Part 773 of this chapter, Requirements for Permits and Permit Processing, shall apply to any person who applies for a permit for surface coal mining and reclamation operations.

(b) In addition to the requirements of Part 773, the following permit application review procedures shall apply:

(1) Any person applying for a permit shall submit five copies of the application to the Office.

(2) The Office shall review an application for administrative completeness and acceptability for further review and shall notify the applicant in writing of the findings. The Office may:

(i) Reject a flagrantly deficient application, notifying the applicant of the findings;

(ii) Request additional information required for completeness stating specifically what information must be supplied and the date by which the information must be submitted; or

(iii) Judge the application administratively complete and acceptable for further review.

(3) Should the applicant not submit the information as required by § 942.773(b)(2)(ii) by the specified date, the Office may reject the application. When the applicant submits the required information by the speci-

fied date, the Office shall review it and advise the applicant concerning its acceptability.

(4) When the application is judged administratively complete, the applicant shall be advised by the Office to file the public notice required by § 773.13 of this chapter.

(5) A representative of the Office shall visit the proposed permit area to determine whether the operation and reclamation plans are consistent with actual site conditions. The applicant will be notified in advance of the time of the visit. At the time of the visit, the applicant shall have the locations of the proposed permit boundaries, topsoil storage areas, sediment control structures, roads, and other significant features contained in the application marked by flags.

(6) Adequacy of information to allow the Office to comply with the National Environmental Policy Act, 42 U.S.C. 4322, shall be considered in the determination of a complete application. The Office may require specific additional information from the applicant as any environmental review progresses when such specific information is needed. Failure to submit the additional information by the date(s) requested could result in disapproval of the application.

(c) In addition to the information required by subchapter G of this chapter, the Office may require an applicant to submit supplementary information to ensure compliance with applicable Federal laws and regulations other than the Act.

(d) *Review of Tennessee State program permits.* In lieu of the provisions of § 773.11(d)(2) of this chapter, the following shall apply:

(1) Beginning on the effective date of this program, the Office will review all permanent program permits issued by the State of Tennessee.

(2) If the Office determines that any State permit was granted contrary to the provisions of the Act, the Office will: (i) Notify the permittee in writing and state the reasons for its determination; (ii) provide the permittee a reasonable time within which to resubmit the permit application in whole or in part, as appropriate; (iii) provide the permittee a reasonable time within which to conform ongoing surface coal mining and reclamation operations to the requirements of this part; and (iv) provide the permittee with the opportunity for a non-adjudicatory hearing to contest the determination by the Office.

(3) If the permittee fails to resubmit the permit application or conform the ongoing surface coal mining and reclamation operations to the requirements of this part within the time specified, the Office may suspend or revoke the permit.

(4) The Office's suspension or revocation of a permit under paragraph (d)(3) of this section shall be subject to administrative and judicial review in accordance with the provisions of Part 775 of this chapter.

§ 942.774 Revision; renewal; and transfer, assignment, or sale of permit rights.

(a) Part 774 of this chapter, Revision; Renewal; and Transfer, Assignment, or Sale of Permit Rights, shall apply to any such actions involving surface coal mining and reclamation operations permits.

(b) Any revision to the approved mining or reclamation plan will be subject to review and approval by the Office. A significant revision to the reclamation plan will be subject to the public notice and hearing provisions of the program prior to approval and implementation. A change in the reclamation plan will be considered significant if it has the potential to affect the achievement of reclamation as specified in the approved plan.

(c) In addition to the requirements of Part 774 of this chapter, any person having an interest which is or may be adversely affected by a decision on the transfer, assignment, or sale of permit rights, including an official of any Federal, State, or local government agency, may submit written comments on the application to the Office within thirty days of either the publication of the newspaper advertisement required by § 774.17(b)(2) of this chapter or receipt of an administratively complete application, whichever is later.

§ 942.775 Administrative and judicial review of decisions.

Part 775 of this chapter, Administrative and Judicial Review of Decisions, shall apply to all decisions on permits.

§ 942.777 General content requirements for permit applications.

Part 777 of this chapter, General Content Requirements for Permit Applications, shall apply to any person who makes application for a permit to conduct surface coal mining and reclamation operations.

§ 942.778 Permit applications—Minimum requirements for legal, financial, compliance, and related information.

Part 778 of this chapter, Permit Applications—Minimum Requirements for Legal, Financial, Compliance, and Related Information, shall apply to any person who makes application for a permit to conduct surface coal mining and reclamation operations.

§ 942.779 Surface mining permit applications—Minimum requirements for information on environmental resources.

Part 779 of this chapter, Surface Mining Permit Applications—Minimum Requirements for Information on Environmental Resources, shall apply to any person who makes application to conduct surface coal mining and reclamation operations.

§ 942.780 Surface mining permit applications—Minimum requirements for reclamation and operation plan.

Part 780 of this chapter, Surface Mining Permit Applications—Minimum Requirements for Reclamation and Operation Plan, shall apply to any person who makes application to conduct surface coal mining and reclamation operations.

§ 942.783 Underground mining permit applications—Minimum requirements for information on environmental resources.

Part 783 of this chapter, Underground Mining Permit Applications—Minimum Requirements for Information on Environmental Resources, shall apply to any person who makes application to conduct underground coal mining operations.

§ 942.784 Underground mining permit applications—Minimum requirements for reclamation and operation plan.

Part 784 of this chapter, Underground Mining Permit Applications—Minimum requirements for Reclamation and Operation Plan, shall apply to any person who makes application for a permit to conduct underground coal mining operations.

§ 942.785 Requirements for permits for special categories of mining.

Part 785 of this chapter, Requirements for Permits for Special Categories of Mining, shall apply to each person who makes application for a permit to conduct certain categories of surface coal mining and reclamation operations as specified therein.

§ 942.795 Small operator assistance program.

Part 795 of this chapter, Small Operator Assistance Program, shall apply to any person making application for assistance under the small operator assistance program.

§ 942.800 Bond and insurance requirements for surface coal mining and reclamation operations.

(a) Except as provided in paragraph (b) of this section, Part 800 of this chapter, Bond and Insurance Requirements for Surface Coal Mining and Reclamation Operations Under Regulatory Programs, shall apply to any person conducting surface coal mining and reclamation operations.

(b) (1) The Office shall review the adequacy of the bonds for those operators who posted reclamation bonds with the State of Tennessee under its permanent regulatory program prior to the effective date of this program,who gave the State collateral to guarantee reclamation, or who was required to take either of these actions.

(2) Where the Office determines that a bond amount is inadequate it shall notify the operator that additional bond is required. The operator shall post the required bond or collat-

eral in the amount and within the time required by the Office. All bonds shall be made payable to "The United States or the State of Tennessee."

(3) Not later than 30 days after the effective date of this program each permanent program permittee shall either: (i) Post an acceptable new bond in the required amount made payable to "The United States or The State of Tennessee" or (ii) provide an executed assignment of the required acceptable bond made payable to "The United States or The State of Tennessee."

§ 942.815 Performance standards—Coal exploration.

Part 815 of this chapter, Permanent Program Performance Standards—Coal Exploration, shall apply to any person who conducts coal exploration.

§ 942.816 Performance standards—Surface mining activities.

(a) Except as modified by paragraphs (b) through (h) of this section, Part 816 of this chapter, Permanent Program Performance Standards—Surface Mining Activities, shall apply to any person who conducts surface mining activities in the State of Tennessee.

(b) The permittee shall comply with the site-specific terms of the permit except that references to provisions of the Tennessee State program shall be read to require compliance with the relevant provisions of this part. Where the permit does not specify site-specific standards with which compliance is required, the permittee shall comply with the standards of this Part.

(c) *Diversions.* In lieu of the requirements of § 816.43(a)(4) of this chapter, diversion design shall incorporate the following requirements:

(1) Channel lining shall be designed using standard engineering practices to pass safely the design velocities. Riprap shall comply with the requirement of § 816.71(f)(3) of this chapter, except for sand and gravel.

(2) Freeboard shall be no less than 0.3 feet. Protection shall be provided for transition of flows and for critical areas such as swales and curves. Where the area protected is a critical area as determined by the Office, the design freeboard may be increased.

(3) Energy dissipators shall be installed when necessary at discharge points, where diversions intersect with natural streams and exit velocity of the diversion ditch flow is greater than that of the receiving stream.

(4) Excess excavated material not utilized in diversion channel geometry or regrading of the channel shall be disposed of in accordance with §§ 816.71 through 816.74 of this chapter.

(d) *Hydrologic Balance: Siltation Structures.* In lieu of the requirements of § 816.46(c)(1)(iii)(A) of this chapter, sedimentation ponds shall provide a storage volume of no less than 0.2 acre feet per disturbed acre draining into the basin. The Office may approve lesser sediment storage volumes equal to the sediment calculated to enter the pond between planned cleanout intervals upon submission and approval of a plan for removing sedimentation from the pond which includes a description of the equipment to be used. The minimum sediment storage volume shall be equal to 0.1 acre feet per disturbed acre.

(e) *Backfilling and grading: General requirements.* In addition to the requirements of § 816.102(a)(6) of this chapter, backfilling and grading shall proceed in accordance with the following timing requirements:

(1) *Contour mining.* Rough backfilling and grading shall follow coal removal by not more than 60 days or 1,500 linear feet.

(2) *Area mining.* Rough backfilling and grading shall be completed within 180 days following coal removal and shall not be more than four spoil ridges behind the pit being worked, the spoil from the active pit being considered the first ridge.

(3) The Office may grant additional time for rough backfilling and grading if the permittee can demonstrate, through the detailed written analysis under Section 780.18(b)(3) of this chapter, that additional time is necessary.

(f) *Revegetation: Standards for success.* In lieu of the requirements of § 816.116 (b)(1) through (b)(6) of this chapter, the following revegetation success standards and sampling techniques shall be used by the Office.

(1) For areas developed for use as pasture or hay production, the ground cover shall be at least ninety percent (90%) and crop production shall be equal to or greater than the average county yield as stated by the Tennessee Crop Reporting Service for the county in which the permit area is located.

(2) For areas developed for use as cropland, crop production shall be equal to or greater than the average county yield as stated by the Tennessee Crop Reporting Service for the county in which the permit area is located. Adjustment for local yield variation within the county may be made for disease, pests, weather-induced variations, and differences in crop management practices.

(3) For areas developed for wildlife habitat, recreational or forest products, the ground cover shall be at least eighty percent (80%) and the stocking of woody plants shall be at least equal the rate specified in the approved mining and reclamation plan.

(i) Minimum stocking levels and planting arrangements shall be specified by the Office on the basis of local and regional conditions and after consultation with the State agencies responsible for the administration of forestry and wildlife programs.

(ii) Trees and shrubs that will be used in determining the success of stocking and the adequacy of plant arrangement shall have utility for the approved postmining land use. At the time of bond release, such trees and shrubs shall be healthy, and at least eighty percent (80%) shall have been in place for at least three growing seasons. No trees and shrubs in place for less than two growing seasons shall be counted in determining stocking adequacy.

(iii) Vegetative ground cover shall not be less than that required to achieve the approved postmining land use.

(4) Bare areas shall not exceed one-sixteenth (1/16) acre in size and total not more than ten percent (10%) of the area seeded.

(5) Distribution of woody plants within the permit area shall be consistent with the post-mining land use.

(6) Sampling techniques for measuring woody plant stocking and ground cover shall be in accordance with techniques approved by the Office. Actual crop yields shall be used to determine production.

(g) *Roads.* In lieu of the requirements of section 816.150(c) of this chapter, roads shall be designed and constructed or reconstructed in compliance with the following standards in order to control subsequent erosion and disturbance of the hydrologic balance.

(1) *Primary Roads.* (i) Except for existing roads and where lesser grades are necessary to control site-specific conditions, the overall grades shall not exceed lv:10h (10 percent); the maximum pitch grade shall not exceed lv:6.5h (15 percent); and there shall be not more than three hundred (300) feet of pitch grade exceeding ten (10) percent within any consecutive one thousand (1,000) feet of primary roads. In no case shall there by any pitch grade over fifteen (15) percent.

(ii) Culvert spacing shall not exceed one thousand (1,000) feet on grades of zero (0) to three (3) percent, eight hundred (800) feet on grades of three (3) to six (6) percent, five hundred (500) feet on grades of six (6) to ten (10) percent, and three hundred (300) feet on grades of ten (10) percent or greater. Culverts shall be installed at closer intervals than the maximum in this part if required by the Office as appropriate for the erosive properties of the soil or to accommodate flow from small intersecting drainages. Culverts may be constructed at greater intervals than the maximum indicated in this part if approved by the Office upon a finding that greater spacing will not increase erosion.

(iii) Culverts shall be covered by compacted fill to a minimum depth of one foot.

(2) *Ancillary Roads.* (i) Field design methods may be utilized for ancillary roads.

(ii) Where lesser grades are necessary to control site-specific conditions overall grade shall not exceed lv:10h (10 percent). Pitch grade shall not exceed lv:5h (20 percent). There shall not be more than one thousand (1,000) consecutive feet of maximum pitch grade.

(iii) Ancillary roads may meander so as to avoid large growths of vegetation and other natural obstructions.

(iv) Compaction on road embankments shall be only to the extent necessary to control erosion and maintain the road.

(v) Temporary culverts and bridges shall be sized to safely pass the one (1) year, six (6) hour precipitation event.

(h) *Use of Explosives.* In lieu of the requirements of § 816.64(a)(2) of this chapter, all blasting shall be conducted between sunrise and sunset. Blasting may not be conducted at times different from those announced in the blasting schedule except in emergency situations where rain, lightning, or other atmospheric conditions, or operator or public safety requires unscheduled blasts. The Office may specify more restrictive time periods for blasting.

§ 942.817 Performance standards—Underground mining activities.

(a) Part 817 of this chapter, Permanent Program Performance Standards—Underground Mining Activities, as modified by paragraphs (b)-(f) of this section, shall apply to any person who conducts underground mining activities in the State of Tennessee.

(b) The permittee shall comply with the site-specific terms of the permit except that references to provisions of the Tennessee State program shall be read to require compliance with the relevant provisions of this part. Where the permit does not specify site-specific standards with which compliance is required, the permittee shall comply with the standards of this Part.

(c) *Diversions.* In lieu of the requirements of § 817.43(a)(4) of this chapter diversion design shall incorporate the following requirements:

(1) Channel lining shall be designed using standards engineering practices to pass safely the design velocities. Riprap shall comply with the requirements of § 817.71(f)(3) of this chapter, except for sand and gravel.

(2) Freeboard shall be no less than 0.3 feet. Protection shall be provided for transition of flows and for critical areas such as swales and curves. Where the area protected is a critical area as determined by the Office, the design freeboard may be increased.

(3) Energy dissipators shall be installed when necessary at discharge points, where diversions intersect with natural streams and exit velocity of the diversion ditch flow is greater than that of the receiving stream.

(4) Excess excavated material not utilized in diversion channel geometry or regrading of the channel shall be disposed of in accordance with §§ 817.71 through 817.74 of this chapter.

(d) *Hydrologic balance: Siltation structures.* In lieu of the requirements of § 817.46(c)(1)(ii)(A) of this chapter, sedimentation ponds shall provide a storage volume of no less than 0.2 acre feet per distributed acre draining into the basin. The Office may approve less sediment storage volumes equal to the sediment calculated to enter the pond between planned cleanout intervals upon submission and approval of a plan for removing sediment from the pond which includes a description of the equipment to be used. The minimum sediment storage volume shall be equal to 0.1 acre feet per disturbed acre.

(e) *Revegetation: Standards for success.* In lieu of the requirements of § 817.116 (b)(1) through (b)(6) of this chapter, the following revegatation success standards and sampling techniques shall be used by the Office.

(1) For areas developed for use as pasture or hay production, the ground cover shall be at least ninety percent (90%) and crop production shall be equal to or greater than the average county yield as stated by the Tennessee Crop Reporting Service for the county in which the permit area is located.

(2) For areas developed for use as cropland, crop production shall be equal to or greater than the average county yield as stated by the Tennessee Crop Reporting Service for the county in which the permit area is located. Adjustment for local yield variation within the county may be made for disease, pests, weather-induced variations, and differences in crop management practices.

(3) For areas developed for wildlife habitat, recreational or forest products, the ground cover shall be at least 80 percent (80%) and the stocking of woody plants shall be at least equal to the rate specified in the approved mining and reclamation plan.

(i) Minimum stocking levels and planting arrangements shall be specified by the Office on the basis of local and regional conditions and after consultation with the State agencies responsible for the administration of forestry and wildlife programs.

(ii) Trees and shrubs that will be used in determining the success of stocking and the adequacy of plant arrangement shall have utility for the approved postmining land use. At the time of bond release, such trees and shrubs shall be healthy, and at least eighty percent (80%) shall have been in place for at least three growing seasons. No trees and shrubs in place for less than two growing seasons shall be counted in determining stocking adequacy.

(iii) Vegetative ground cover shall not be less than that required to achieve the approved postmining land use.

(4) Bare areas shall not exceed one-sixteenth ($\frac{1}{16}$) acre in size and total not more than ten percent (10%) of the area seeded.

(5) Distribution of woody plants within the permit area shall be consistent with the post-mining land use.

(6) Sampling techniques for measuring woody plant stocking and ground cover shall be in accordance with techniques approved by the Office. Actual crop yields shall be used to determine production.

(f) *Roads.* In lieu of the requirements of § 817.150(c) of this chapter, roads shall be designed and constructed or reconstructed in compliance with the following standards in order to control subsequent erosion and disturbance of the hydrologic balance.

(1) *Primary Roads.* (i) Except for existing roads and where lesser grades are necessary to control site-specific conditions, the overall grade shall not exceed lv:10h (10 percent), the maximum pitch grade shall not exceed lv:6.5h (15 percent), and there shall be not more than three hundred (300) feet of pitch grade exceeding ten (10) percent within any consecutive one thousand (1,000) feet of primary roads. In no case shall there be any pitch grade over fifteen (15) percent.

(ii) Culvert spacing shall not exceed one thousand (1,000) feet on grades of zero (0) to three (3) percent, eight hundred (800) feet on grades of three (3) to six (6) percent, and five hundred (500) feet on grades of six (6) to ten (10) percent, and three hundred (300) feet on grades of ten (10) percent or greater. Culverts shall be installed at closer intervals than the maximum in this part if required by the Office as appropriate for the erosive properties of the soil or to accommodate flow from small intersecting drainages. Culverts may be constructed at greater intervals than the maximum indicated in this part if approved by the Office upon a finding that greater spacing will not increase erosion.

(iii) Culverts shall be covered by compacted fill to a minimum depth of one foot.

(2) *Ancillary Roads.* (i) Field design methods may be utilized for ancillary roads.

(ii) Where lesser grades are necesary to control site-specific condition, overall grade shall not exceed lv:10h (10 percent). Pitch grade shall not exceed 1v:5h (20 percent). There shall not be more than one thousand (1,000) consecutive feet of maximum pitch grade.

(iii) Ancillary roads may meander so as to avoid large growths of vegetation and other natural obstructions.

(iv) Compaction on road embankments shall be only to the exten necessary to control erosion and maintain the road.

(v) Temporary culverts and bridges shall be sized to safely pass the one (1) year, six (6) hour precipitation event.

§ 942.819 Special performance standards—Auger mining.

Part 819 of this chapter, Special Permanent Program Performance Standards—Auger Mining, shall apply to any person who conducts surface coal mining operations which include auger mining.

§ 942.823 Special performance standards—Operations on prime farmland.

Part 823 of this chapter, Special Permanent Program Performance Standards—Operations on Prime Farmland, shall apply to any person who conducts surface coal mining operations on prime farmland.

§ 942.824 Special performance standards—Mountaintop removal.

Part 824 of this chapter, Special Permanent Program Performance Standards—Mountaintop Removal, shall apply to any person who conducts surface coal mining and reclamation operations constituting mountaintop removal.

§ 942.827 Special performance standards—Coal preparation plants not located within the permit area of a mine.

Part 827 of this chapter, Permanent Program Performance Standards—Coal Preparation Plants Not Located Within the Permit Area of a Mine, shall apply to any person who conducts surface coal mining and reclamation operations which include the operation of a coal preparation plant not located within the permit area of a mine.

§ 942.828 Special performance standards—In situ processing.

Part 828 of this chapter, Special Permanent Program Performance Standards—In Situ Processing, shall apply to any person who conducts surface coal mining and reclamation operations which include the in situ processing of coal.

§ 942.842 Federal inspections.

Part 842 of this chapter, Federal Inspections, shall apply to all exploration and surface coal mining and reclamation operations.

§ 942.843 Federal enforcement.

Part 843 of this chapter, Federal Enforcement, shall apply regarding enforcement action on coal exploration and surface coal mining and reclamation operations.

§ 942.845 Civil penalties.

Part 845 of this chapter, Civil Penalties, shall apply to the assessment of civil penalties for violations on coal exploration and surface coal mining and reclamation operations.

§ 942.955 Certification of blasters.

Part 955 of this chapter, *Certification of Blasters in Federal Program States and on Indian Lands*, shall apply to the training, examination and certification of blasters for surface coal mining and reclamation operations.

[51 FR 19462, May 29, 1986]

PART 943—TEXAS

Sec.
943.1 Scope.
943.10 State program approval.
943.15 Approval of regulatory program amendments.
943.16 Required program amendments.
943.20 Approval of Texas abandoned mine plan.

AUTHORITY: Pub. L. 95-87, Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*).

§ 943.1 Scope.

This part contains all rules applicable only within Texas which have been adopted under the Surface Mining Control and Reclamation Act of 1977.

[45 FR 13008, Feb. 27, 1980]

§ 943.10 State program approval.

The Texas State program as submitted July 20, 1979, and amended November 13, 1979, and December 20, 1979, is approved, effective February 16, 1980. The Texas State program amendments of March 27, 1980, are approved effective June 18, 1980. Copies of the approved program as amended are available at:

Texas Railroad Commission, Surface Mining and Reclamation Division, 1124 S. IH 35, Austin, Texas 78711.

Texas Railroad Commission, Surface Mining and Reclamation Division, Field Office, Suite 125, 1121 East SW Loop 323, Tyler, Texas 75703.

Texas Railroad Commission, Surface Mining and Reclamation Division, Field Office, Shank Office Building, 1419 3rd Street, Floresville, Texas 78114.
Office of Surface Mining Reclamation and Enforcement, Scarritt Building, 818 Grand Avenue, 5th Floor, Kansas City, Missouri 64106, Telephone (816) 374-3920.
Office of Surface Mining Reclamation and Enforcement, Interior South Building, 1951 Constitution Avenue, Washington, D.C. 20240, Telephone (202) 343-4728.

[45 FR 41137, June 18, 1980]

§ 943.15 Approval of regulatory program amendments.

(a) The Texas permanent regulatory program amendments received by OSM on March 27, 1980, are approved effective November 26, 1980.

(b) The Texas permanent regulatory program amendment received by OSM on September 18, 1981, as clarified by Texas on March 23, 1982, is approved effective June 3, 1982.

(c) The following amendments submitted August 31, 1984, as modified February 8, 1985, are approved effective July 9, 1985: revisions amending Texas coal mining regulations at 051.07.04.340, 051.07.04.510, 051.07.04.008 except for the definition of "support facilities," 051.07.04.138, 051.07.04.184, 051.07.04.201, 051.07.04.620, 051.07.04.621, 051.07.04.622, 051.07.04.624 and 051.07.04.625; and repeal of section 051.07.04.623.

[45 FR 78637, Nov. 26, 1980, as amended at 47 FR 24131, June 3, 1982; 50 FR 27951, July 9, 1985]

§ 943.16 Required program amendments.

Pursuant to 30 CFR 732.17, Texas is required to submit for OSM's approval the following proposed program amendments by the dates specified.

(a) By May 15, 1986, Texas shall submit for OSM's approval

(1) Rules governing the training, examination and certification of blasters and

(2) A program to examine and certify all persons who are directly responsible for the use of explosives in surface coal mining operation.

[50 FR 23300, June 3, 1985, as amended at 51 FR 2490, Jan. 17, 1986]

§ 943.20 Approval of Texas abandoned mine plan.

The Texas Abandoned Mine Plan, as submitted on April 24, 1980, and amended on May 30, 1980, and June 2, 1980, and June 4, 1980, is approved, effective June 23, 1980. Copies of the approved program are available at:

Office of Surface Mining Reclamation and Enforcement, Region IV, 818 Grand Avenue, Scarritt Building, Kansas City, Missouri 64106.
The Railroad Commission of Texas, Surface Mining and Reclamation Division, 1124 South IH 35, Austin, Texas.
The Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Avenue, N.W., Washington, D.C. 20245.

[45 FR 41940, June 23, 1980]

PART 944—UTAH

Sec.
944.1 Scope.
944.10 State Regulatory Program approval.
944.12 Provisions of State Regulatory Program disapproved to comply with the Order of the District Court.
944.15 Approval of amendments to State regulatory program.
944.16 Required program amendments.
944.20 Approval of Utah abandoned mine plan.

AUTHORITY: Sec. 503, Pub. L. 95-87 (30 U.S.C. 1253).

§ 944.1 Scope.

This part contains all rules applicable only within Utah that have been adopted under the Surface Mining and Reclamation Act of 1977.

[46 FR 5913, Jan. 21, 1981]

§ 944.10 State Regulatory Program approval.

(a) The Utah State program as submitted on March 3, 1980, and as amended and clarified on June 16 and July 24, 1980, and resubmitted on December 23, 1980, was conditionally approved effective January 21, 1981.

(b) Copies of the approved program, together with copies of the letter of the Division of Oil, Gas and Mining agreeing to the conditions in § 944.11, are available at:

Division of Oil, Gas and Mining, 1588 West North Temple, Salt Lake City, Utah 80441, Telephone: (801) 533-5771.

Office of Surface Mining, Brooks Towers, Room 2115, 1020 15th Street, Denver, CO 80202, Telephone: (303) 837-5421.

Office of Surface Mining, Interior South Building, Room 153, 1951 Constitution Avenue, NW, Washington, DC 20240, Telephone: (202) 343-4728.

(30 U.S.C. 1201 *et seq.*)

[46 FR 5913, Jan. 21, 1981, as amended at 47 FR 26831, June 22, 1982; 47 FR 42350, Sept. 27, 1982]

§ 944.12 Provisions of State Regulatory Program disapproved to comply with the Order of the District Court.

(a) The following provisions of the Utah permanent regulatory program submission are hereby disapproved to the extent indicated in compliance with the February 26, 1980, May 16, 1980, and August 15, 1980, opinions and orders of the U.S. District Court for the District of Columbia (*In re: Permanent Surface Mining Regulation Litigation* (Civ. Action No. 79-1144)).

(1) Sections UMC/SMC 700.5, the definition of "mine plan area," and the use of the term in Parts SMC 779, SMC 780, UMC 783 and UMC 784 to the extent that they require information outside the permit area that is not specifically articulated in sections 507 and 508 and the corresponding Utah statutory provisions of 40-10-10 UCA.

(2) Sections UMC/SMC 701.11(d)(1) (i) and (ii), relating to exemptions for existing structures, to the extent that the exemptions are not mandatory after the appropriate findings are made.

(3) Sections SMC/UMC 761.5 (a)(2)(i), the definitions of "valid existing rights," to the extent they do not allow recognition of such rights an operator may claim by having made a good faith effort to obtain all permits before 8/3/77 as stipulated by the court's decision.

(4) Sections SMC 761.11(c), 761.12(f)(1) and UMC 761.11(a)(3) and .12(b) to the extent that they prohibit or restrict mining near places eligible for listing on the National Register of Historic Places, and the words "or a statutory or regulatory responsibility for" in UMC/SMC 761.12(f)(1). Further, both provisions are disapproved to the extent that they apply to privately owned places listed on the National Register of Historic Places in addition to publicly owned places.

(5) Sections UMC/SMC 776.11(b)(3), concerning the requirements for maps of the proposed exploration area.

(6) Sections UMC/SMC 761.11(b)(5), concerning the requirements that operators explain their basis for the exploration area when the surface is owned by a person other than the operator.

(7) Sections SMC 779.20, SMC 780.16, UMC 783.20, and UMC 784.21 requiring a permit application to contain a study of fish and wildlife and to include a fish and wildlife reclamation plan.

(8) Sections 779.21 and UMC 783.21 to the extent they require a soil survey for lands other than those which a reconnaissance inspection suggests may be prime farmland.

(9) Sections UMC/SMC 785.17(b)(3) and SMC/UMC 823.14(c), concerning excessive soil compaction, pending OSM's promulgation of a standard for soil compaction.

(10) Sections SMC/UMC 785.17 (b)(8), to the extent that they require prime farmland reclamation target yields to be based on estimated yields under a high level of management rather than a level of management equivalent to that used on prime farmlands in the surrounding area.

(11) Sections UMC/SMC 785.19 (d)(2) (iii) and (iv) to the extent that the regulations do not allow an analysis from data collected over a period of less than one year or extrapolated from existing data if such shorter period or extrapolation process is sufficient to enable the regulatory authority to make a determination of the impact of the proposed operation on the hydrologic balance of the area.

(12) Sections UMC/SMC 785.19 (3)(1)(ii) insofar as the regulations do not allow negligible farmland interruption and undeveloped range lands as exclusions to the hydrologic requirements of section 40-10-11(2)(e) UCA of the Utah statute.

(13) Sections UMC/SMC 785.19(e) (2) insofar as they prohibit mining when the mining would create a negligible impact on the farm's productive capacity.

(14) Sections SMC/UMC 805.13(d) to the extent that the exception the regulatory authority may grant might be from all of section 816.

(15) Sections UMC/SMC 806.12 (e)(6)(iii), (g)(7)(iii) to the extent they require cessation of operations upon the insolvency of a surety.

(16) Sections UMC/SMC 807.11(e) to the extent they fail to provide for citizens' access to the mine site for performance bond release.

(17) Sections UMC/SMC 808.12(c) to the extent that they limit bond liability to protection of the hydrologic balance.

(18) Sections UMC/SMC 808.14(b) to the extent they allow the regulatory authority to forfeit and keep the entire amount of a bond where the entire amount is not needed to complete a reclamation plan.

(19) Sections SMC 816.42 (a)(1) and (a)(7) to the extent they apply effluent limitation standards to the reclamation phase of a surface coal mining operation.

(20) Sections SMC 816.42(b) and UMC 817.42(b), relating to effluent standard exemptions during major storm periods, pending OSM's promulgation of new sediment removal regulations.

(21) Sections SMC 816.46(b) and UMC 817.46(b), concerning sediment storage volume in sediment ponds, pending OSM's promulgation of new requirements.

(22) Sections SMC 816.46(c) and UMC 817.16.46(c), concerning detention time for water in sediment ponds, pending OSM's promulgation of new requirements.

(23) Sections SMC 816.46(d) and UMC 817.46(d) to the extent they require dewatering devices to have a discharge rate to achieve and maintain the theoretical detention time for sediment ponds.

(24) Sections SMC 816.46(h) and 817.46(h), concerning sediment removal from sediment ponds, pending OSM's promulgation of rules.

(25) Sections SMC 816.65(f), requiring special approval prior to blasting within 1,000 feet of certain buildings and 500 feet of other facilities and which restricts blasting at distances greater than 300 feet.

(26) Sections UMC 817.95 and SMC 816.95, concerning air resources protection, to the extent the control measures enumerated for control of fugitive dust are not directly related to control of soil erosion.

(27) Sections SMC 816.115 and UMC 817.115 to the extent they require an operator who proposes range or pasture as the post-mining land use to actually use the land for grazing for the last two years of bond liability.

(28) Sections UMC 817.116(b) and SMC 816.116(b) to the extent that they state that an operator's responsibility for successful revegetation does not begin until the vegetation reaches 90 percent of the natural cover in the area.

(29) Sections SMC 816.133(b)(1) and UMC 817.133(b)(1) to the extent they do not allow restoration of lands to the conditions they were capable of supporting prior to any mining.

(30) Sections SMC 816.133(c) and UMC 817.133(c) to the extent they require an operator to provide "letters of commitment" for proposed land use changes or for proposed cropland use.

(31) Sections UMC/SMC 823.11(c), 823.15(b), and 823.15(c) to the extent they require an operator on prime farmland to actually return the land to crop production. The land needs only to be "capable" of supporting the designated use.

(32) Sections UMC/SMC 845.13 and 845.14 to the extent they impose a civil penalty point system.

(33) Sections UMC 783.25(c), (h), and (i) to the extent that they require cross sections, maps and plans as part of the information requisite of an underground permit application.

(34) Section UMC 817.54 to the extent that it requires an underground operator to replace the water supply of landowners if the operation contaminates, diminishes or interrupts the supply.

(35) Sections UMC/SMC 823 to the extent that they do not allow an exemption to the performance standards of operations on prime farmlands for surface facilities used over extended periods of time but which effect a minimal amount of land.

(b) The court suspended the requirements of 30 CFR 816.83(a) and 30 CFR

817.83(a) to the extent that they would preclude an exemption from the underdrain requirements for coal processing waste banks where an operator could demonstrate that an alternative to the required subdrainage system would ensure structural integrity of the waste bank and protection of ground or surface water quality. The Utah regulations SMC 816.83(a) (1) and (2) and UMC 817.83(a) (1) and (2) provide for the exemption, as specified by the Court. Nevetheless, Utah's provisions for water control measures for coal processing waste banks would be disapproved to comply with the court's order. UMC 817.102 insofar as these sections do not provide some flexibility for settled fills that have become stabilized and revegetated.

[46 FR 5913, Jan. 21, 1981]

§ 944.15 Approval of amendments to State regulatory program.

(a) The following amendments were approved effective June 22, 1982:

(1) Utah House Bill 66 which amends section 40-10-10, 40-10-11, 40-10-16, 40-10-17, 40-10-18, 40-10-21, 40-10-22, and 40-10-24, Utah Code Annotated 1953.

(2) Utah revised regulations UMC 817.124(b) and UMC 784.20(b)(3)(v) adopted April 30 and May 1, 1981.

(b) The following amendments are approved effective (date of publication).

(1) Regulatory modifications to UMC/SMC 845 adopted April 30 and May 1, 1981, as revised August 26, 1982.

(2) Modification of guidelines to allow use of the range site method of measuring revegetation success pursuant to SMC 816.116 and UMC 817.116 submitted to OSM May 21, 1981, together with supplements submitted October 20, 1981 and February 5, 1982.

(c) The following amendments are approved effective December 13, 1982:

(1) UMC 817.42(a)(3)(i) and UMC 817.42(a)(3)(ii) adopted June 29, 1981, as amended August 26, 1982.

(2) UMC 817.53(c) and SMC 816.53(c) adopted June 29, 1981, as amended August 26, 1982.

(3) UMC 817.101(c) adopted June 29, 1981, as amended August 26, 1982.

(4) UMC 817.101(b)(8) adopted August 26, 1982.

(d) The amendments to the following sections were adopted.

(1) November 30, 1982, are approved effective March 7, 1983.

(i) SMC 816.72/UMC 817.72 subparts (b) and (c).

(ii) UMC/SMC 785.19 subpart (c)(3)(ii).

(e) The following amendments are approved effective August 29, 1984.

(1) Modifications to Utah regulations, section UMC 816.42 and UMC 817.42, adopted August 26, 1983.

(2) Modifications to Utah regulations section UMC 840.11 and SMC 840.11 adopted October 27, 1983.

(3) Modifications to Utah regulations, section SMC/UMC 843.12 adopted January 27, 1984.

(f) The following amendments are approved effective December 3, 1985: modifications to the Utah State Program regulations adopted by the Utah Board of Oil, Gas and Mining on June 28, 1984, as revised on June 20, 1985. Those modifications included the following. The following rules in existence prior to June 28, 1984, were repealed: SMC/UMC 800, 805, 806, 807, 808 and UMC 843.11, 843.15, 843.16, 845.12, 845.13, 845.17, 845.18 and 845.19. The following new or revised sections were adopted: (1) UMC/SMC 700.1, 800.5, 800.11, 800.12, 800.13, 800.14, 800.15, 800.16, 800.17, 800.20, 800.21, 800.23, 800.30, 800.40, 800.50, and 800.60; (2) UMC 843.11, 843.15, 843.16, 845.12, 845.13, 845.17, 845.18, 845.19 and 845.20; and (3) definition of "affected area" at UMC/SMC 700.5, with the exception of the exemption for public roads. The portion of the definition after the word "operations" is not approved:

> The affected area shall include every road used for purposes of access to, or for hauling coal to or from, surface coal mining and reclamation operations, unless the road (a) was designated as a public road pursuant to the laws of the jurisdiction in which it is located; (b) is maintained with public funds, and constructed, in a manner similar to other public roads of the same classification within the jurisdiction; and (c) there is substantial (more than incidental) public use.

(g) The amendments to UMC/SMC 843.13 submitted to OSM by Utah on

February 6, 1984, as revised and clarified by the State in its submittal to OSM dated September 25, 1984 are approved effective December 18, 1985.

(h) The following amendment is approved effective January 16, 1986, modifications to the Utah State Program regulations adopted by the Utah Board of Oil, Gas and Mining on January 31, 1985, as revised on October 2, 1985. Those modifications were as follows: SMC/UMC 700.5—A definition for "incidental boundary change" was added; SMC/UMC 771.21—Paragraph (b)(3) was revised; SMC/UMC 778.12—The existing section was deleted in its entirety and a new section titled "Permit Changes" was adopted.

(i) The following amendments to the Utah State program listed below which were submitted to OSMRE by Utah on January 21, and November 19, 1985 are approved effective June 10, 1986. Revision of the definitions for "adjacent area", "disturbed area" and "permit area"; Deletion of the definition for "mine plan area"; Revisions to SMC 843.11, 843.15, 843.16, 845.12, 845.13, 845.17, 845.18, and 845.19 with the exception of the definition of "mining" to the extent that it excludes the processing, cleaning, concentrating, preparing, or loading of coal at a place other than the mine site; Adoption of SMC 843.20.

[47 FR 42350, Sept. 27, 1982, as amended at 47 FR 55675, Dec. 13, 1982; 48 FR 9526, Mar. 7, 1983; 49 FR 34212, Aug. 29, 1984; 50 FR 49544, Dec. 3, 1985; 50 FR 51521, Dec. 18, 1985; 51 FR 2363, Jan. 16, 1986; 51 FR 20967, June 10, 1986]

§ 944.16 Required program amendments.

Pursuant to 30 CFR 732.17 Utah is required to submit for OSM's approval the following proposed program amendments by the dates specified.

(a) By March 6, 1986, Utah shall submit for OSM's approval:

(1) Rules governing the training, examination and certification of blasters and

(2) A program to examine and certify all persons who are directly responsible for the use of explosives in surface coal mining operations.

(b) [Reserved].

[50 FR 36555, Sept. 6, 1985]

§ 944.20 Approval of Utah abandoned mine plan.

The Utah Abandoned Mine Plan, as submitted on February 9, 1983, and as subsequently revised is approved. Copies of the approved program are available at:

Office of Surface Mining Reclamation and Enforcement, Albuquerque Field Office, 219 Central Avenue NW., Suite 216, Albuquerque, New Mexico 97102

State of Utah, Division of Oil, Gas and Mining, 4241 State Office Building, Salt Lake City, Utah 84114.

(30 U.S.C. 1201 *et seq.*)

[48 FR 24878, June 3, 1983]

PART 946—VIRGINIA

Sec.
946.1 Scope.
946.10 State regulatory program approval.
946.11 Conditions of State regulatory program approval.
946.12 State program provisions disapproved.
946.13 State program provisions set aside.
946.15 Approval of regulatory program amendments.
946.20 Approval of Virginia abandoned mine plan.

AUTHORITY: Pub. L. 95-87, Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*).

§ 946.1 Scope.

This part contains all rules applicable only within Virginia that have been adopted under the Surface Mining Control and Reclamation Act of 1977.

[46 FR 61114, Dec. 15, 1981]

§ 946.10 State regulatory program approval.

The Virginia State Program, as submitted on March 3, 1980, as amended and clarified on June 16, 1980, as resubmitted on August 13, 1981, and clarified in a meeting with OSM on September 21 and 22, 1981, and in a letter to the Director of the Office of Surface Mining on October 15, 1981, was conditionally approved, effective December 15, 1981. Beginning on that date, the Department of Conservation and Economic Development, Division of Mined Land Reclamation, was deemed the regulatory authority in Virginia for all surface coal mining and reclamation operations and all exploration operations on non-Federal and non-Indian lands. By a statutory revision found in Chapter 590 of the 1984 Acts of Assembly signed by the Governor of Virginia on April 7, 1984, the authorities and responsibilities for administering the Virginia State Program are incorporated into the newly established Department of Mines, Minerals and Energy. Effective January 1, 1985, the Department of Mines, Minerals and Energy will be the regulatory authority and contain all the current duties and responsibilities now vested in the Department of Conservation and Economic Development. Copies of the approved program, as amended are available for review at:

Virginia Division of Mined Land Reclamation, 622 Powell Avenue, Big Stone Gap, Virginia 24219.

Office of Surface Mining Reclamation and Enforcement, Flannagan and Carroll Streets, Lebanon, Virginia 24266

Office of Surface Mining Reclamation and Enforcement, Room 5124, 100 L Street, NW, Washington, D.C. 20240.

[49 FR 34477, Aug. 31, 1984]

§ 946.11 Conditions of State regulatory program approval.

The approval of the Virginia State program is subject to the State revising its program to correct the deficiencies listed in this section. The program revisions may be made, as appropriate, to the statute, the regulations, the program narrative, or the Attorney General's opinion. This section indicates, for the general guidance of the State, the component of the program to which the Secretary recommends the change be made.

[46 FR 61114, Dec. 15, 1981, as amended at 47 FR 31550, July 21, 1982; 47 FR 55678, Dec. 13, 1982; 48 FR 25186, June 6, 1983; 48 FR 46031, Nov. 11, 1983; 49 FR 19478, May 8, 1984]

§ 946.12 State program provisions disapproved.

(a) The following provisions are disapproved effective April 22, 1983: Paragraphs 3.01(a)(1), 3.01(a)(4) and 3.01 (a)(5) of the Virginia Coal Surface Mining and Reclamation Regulations for Operations Disturbing Two Surface Acres or Less.

[50 FR 32851, Aug. 15, 1985]

§ 946.13 State program provisions set aside.

(a) Paragraphs 3.01(a)(1), 3.01(a)(4) and 3.01(a)(5) of the Virginia Coal Surface Mining and Reclamation Regulations for Operations Disturbing Two Surface Acres or Less are inconsistent with and less effective than the Federal provisions for the two-acre exemption and are set aside in their entirety under the provisions of section 505(b) of the Surface Mining Control and Reclamation Act of 1977.

[50 FR 32851, Aug. 15, 1985]

§ 946.15 Approval of regulatory program amendments.

(a) The following amendment was approved effective July 21, 1982: Virginia's revised policy statement granting authority to field inspectors to issue cessation orders for imminent danger or harm, submitted January 28, 1982, to satisfy condition (k).

(b) The following amendments were approved effective August 19, 1982:

(1) Section 33.1-246.1 of the Virginia Surface Mining Control and Reclamation Act (Virginia SMCRA), repealed upon adoption of House Bill 975 and upon approval of the amendment by the Secretary of the Interior, submitted July 9, 1982.

(2) Virginia revised regulations, sections V816.150 and V817.150, submitted July 9, 1982.

(c) The following amendments were approved effective September 21, 1982:

(1) New sections 45.1-270.1—45.1-270.7 of the Virginia SMCRA, submitted July 8, 1982.

(2) Virginia revised regulations, section V808.15, new Part V809 and appropriate reference changes to remainder of Subchapter VJ.

(d) The following amendments were approved effective December 13, 1982:

(1) Virginia revised regulations, submitted August 13, 1982, to satisfy conditions (a), (b), (c), (d), (e), (f), (g), (h), (i), (j), (l), (m), (n), (o), (p) and (s).

(2) Amended section 45.1-235(C) of the Virginia SMCRA and Virginia re-

vised regulations, submitted August 13, 1982.

(e) The following amendment was approved effective January 18, 1983: Virginia revised regulations, section V809, submitted September 30, 1982.

(f) The following amendment was approved effective February 28, 1983: Virginia revised regulations, section V809.11, submitted December 20, 1982.

(g) The following amendment was approved effective April 21, 1983: Amended section 45.1-234 of the Virginia SMCRA, submitted March 22, 1983.

(h) The following amendment was approved effective April 22, 1983: Chapter 23 of Title 45 of the Code of Virginia and the Virginia Coal Surface Mining Reclamation Regulations for Operations Disturbing Two Surface Acres or Less except for the provisions listed at 30 CFR 946.12, submitted on July 9, 1982.

(i) The following amendments were approved effective June 6, 1983:

(1) Amended sections 45.1-249 and 45.1-251 of the Virginia SMCRA, submitted March 22, 1983, to satisfy condition (q).

(2) Amended section 45.1-240 of the Virginia SMCRA, submitted March 22, 1983.

(j) The following amendment was approved effective December 27, 1983. Revised § 45.1-270.2—45.1-270.4 of the Code of Virginia and Virginia revised regulations of Part V809, submitted on May 20, 1983.

(k) The following amendment was approved effective March 16, 1984: Revised coal haul road policy, submitted July 27, 1983.

(l) The following amendment was approved effective [Insert publication date]. Revised Virginia regulations, Section V786.19 to add a new part (o), submitted by Virginia on February 10, 1984.

(m) The following amendment submitted to OSM on April 11, 1984, is approved effective August 2, 1984: Virginia's blaster certification program, as contained in the Virginia regulations at Subchapter VM Part V850; the general requirements for use of explosives at sections V816.61(c) and V817.61(c); Chapter 230 of the 1984 Acts of Assembly; and all other items as submitted by Virginia on April 11, 1984, and clarified on July 5, 1984.

(n) The following amendment is approved effective January 1, 1985: Chapter 590 of the 1984 Acts of Assembly to revise various sections of Title 45 of the Code of Virginia, submitted June 13, 1984.

(o) The following amendment was approved effective May 8, 1985. Amended Section 45.1-244 and addition of a new section 45.1-369.1 of the Code of Virginia, relating to the inspection and monitoring of coal surface mining and reclamation operations, submitted February 20, 1985.

(p) The following amendment is approved effective August 15, 1985: Repeal of section 45.1-364 of Chapter 23 of the Code of Virginia and addition of a new section 45.1-364.1, as enacted by the General Assembly of Virginia on March 17, 1984, and submitted to OSM in May 1985.

(q) The following amendment as submitted to OSM on September 4, 1985, is approved, effective November 18, 1985: The definitions of "'coal preparation' or 'coal processing'" and "coal preparation plant" at V700.5 of the Virginia Coal Surface Mining Reclamation Regulations.

[48 FR 25186, June 6, 1983, as amended at 48 FR 56951, Dec. 27, 1983; 49 FR 9899, Mar. 16, 1984; 49 FR 19478, May 8, 1984; 49 FR 30929, Aug. 2, 1984; 49 FR 34477, Aug. 14, 1984; 50 FR 19358, May 8, 1985; 50 FR 32851, Aug. 15, 1985; 50 FR 47390, Nov. 18, 1985]

§ 946.20 Approval of Virginia abandoned mine plan.

The Virginia Abandoned Mine Plan, as submitted on September 22, 1980, is approved. Copies of the approved program are available at:

Office of Surface Mining Reclamation and Enforcement, Region I, 603 Morris St., Charleston, West Virginia 25301

Department of Conservation and Economic Development, Powell and River Streets, Big Stone Gap, Virginia

The Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Avenue, NW., Washington, D.C. 20240

[46 FR 61088, Dec. 15, 1981]

PART 947—WASHINGTON

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AUTHORITY: Pub. L. 95-87, The Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq*).

SOURCE: 48 FR 7883, Feb. 24, 1983, unless otherwise noted.

§ 947.700 Washington Federal program.

(a) This part contains all rules that are applicable to surface coal mining operations in Washington which have been adopted under the Surface Mining Control and Reclamation Act of 1977.

(b) Most of the rules in this part cross-reference pertinent parts of the permanent program regulations in this chapter. The full text of a rule is in the permanent program rule cited under the relevant section of the Washington Federal program.

(c) The rules in this part apply to all surface coal mining operations in Washington conducted on non-Federal and non-Indian lands. The rules in Subchapter D of this chapter apply to operations on Federal lands in Washington.

(d) The information collection requirements contained in this part do not require approval by the Office of Management and Budget under 44 U.S.C. 3507 because there are fewer than ten respondents annually.

(e) The following provisions of Washington laws generally provide for more stringent environmental control and regulation of some aspects of surface coal mining operations than do the provisions of the Surface Mining Control and Reclamation Act and the regulations in this chapter. Therefore, pursuant to section 505(b) of the Act, they shall not generally be construed to be inconsistent with the Act, unless in a particular instance the rules in this Chapter are found by OSM to establish more stringent environmental controls:

(1) Washington Clean Air Act, RCW 70.94.

(2) Washington Food Fish and Shell Fish Laws pertaining to the Department of Fisheries on operation in streams, RCW 75.

(3) Washington Hydraulic Projects Approval Law, RCW 75.20.100.

(4) Washington Forest Practices Act, RCW 76.09.

(5) Washington Water Code, RCW 90.03.

(6) Washington Water Pollution Control Act, RCW 90.48.

(7) Washington Minimum Water Flows and Levels Act, RCW 90.22.

(8) Washington Shoreline Management Act, RCW 90.58.

(9) Washington Pesticide Control Act, RCW 15.58.

(f) The following are the Washington law and regulations that generally interfere with the achievement of the purposes and requirements of the Act and are, in accordance with section 504(g) of the Act, preempted and superseded. Other Washington laws may in an individual situation interfere with the purposes and achievements of the Act and may be preempted and superseded with respect to the performance standards of §§ 947.815 through 947.828 as they affect a particular coal exploration or surface mining operation by publication of a notice to that effect in the FEDERAL REGISTER.

(1) The Washington Surface Mining Act of 1971, Revised Code of Washington (RCW) 78.44, as related to surface coal mining, except to the extent that it regulates surface coal mining operations which affect two acres or less or which otherwise are not regulated by the Surface Mining Control and Reclamation Act.

(2) Surface Mined Land Reclamation regulations, Washington Administrative Code (WAC) 332-18, as they apply to surface coal mining, except to the extent that such regulations apply to surface coal mining operations which affect two acres or less or which otherwise are not regulated by the Surface Mining Control and Reclamation Act.

(g) The Secretary may grant a limited variance from the performance standards of §§ 947.815 through 947.828 of this part if the applicant for a coal exploration approval or surface coal mining reclamation permit submitted pursuant to §§ 947.770 through 947.788 of this part can demonstrate in the application (1) that such a variance is necessary because of the nature of the terrain, climate, biological, chemical, or other relevant physical conditions in the area of the mine; and (2) if applicable, that the proposed variance is no less effective than the environmental protection requirements of the regulations in this program and is consistent with the Act.

[48 FR 7883, Feb. 24, 1983, as amended at 48 FR 22292, May 18, 1983]

§ 947.701 General.

(a) Sections 700.5, 700.11, 700.12, 700.13, 700.14, 700.15, and Part 701 of this chapter shall apply to surface coal mining operations in Washington.

(b) The following modified definitions shall be applicable under § 701.5 of this chapter:

(1) *Arid and semiarid area* means, in the context of alluvial valley floors, an area of the interior western United States, west of the 100th meridian west longitude, experiencing water deficits, where water use by native vegetation equals or exceeds that supplied by precipitation. All coalfields located in North Dakota west of the 100th meridian west longitude, all coalfields in Montana, Wyoming, Utah, Colorado, New Mexico, Idaho, Nevada, and Arizona, the Eagle Pass field in Texas, and the Stone Canyon and the Ione fields in California are in arid and semiarid areas, except that all coalfields located in the State of Washington west of the crest of the Cascade Mountain Range are not in arid or semiarid areas.

(2) *Forestry (Forest Land).* Includes land used or managed for the long-term production of wood, wood fiber, or wood derived products. All land which is capable of supporting a merchantable stand of timber and is not being actively used in a manner or for a use which is incompatible with timber growing is also included. Land used for facilities in support of forest harvest and management operations which is adjacent to or an integral part of these operations is also included.

(c) Records required by § 701.14 of this chapter to be made available locally to the public shall be retained at the county recorder's office of the county in which an operation is located, and at the nearest OSM Field Office.

[48 FR 7883, Feb. 24, 1983, as amended at 48 FR 22292, May 18, 1983]

§ 947.707 Exemption for coal extraction incident to government-financed highway or other construction.

Part 707 of this chapter, *Exemption for Coal Extraction Incident to Government-Financed Highway or Other Construction*, shall apply to surface coal mining and reclamation operations.

§ 947.761 Areas designated unsuitable for surface coal mining by act of Congress.

Part 761 of this chapter, *Areas Designated by Act of Congress*, shall apply to surface coal mining and reclamation operations.

§ 947.762 Criteria for designating areas as unsuitable for surface coal mining operations.

Part 762 of this chapter, *Criteria for Designating Areas Unsuitable for Surface Coal Mining Operations*, shall apply to surface coal mining and reclamation operations.

§ 947.764 Process for designating areas unsuitable for surface coal mining operations.

(a) Part 764 of this chapter, *State Processes for Designating Areas Unsuitable for Surface Coal Mining Operations*, pertaining to petitioning, initial processing, hearing requirements, decisions, data base and inventory systems, public information, and regulatory responsibilities shall apply to surface coal mining and reclamation operations.

(b) The Secretary shall notify the Washington Department of Natural Resources and the Department of Ecology of any area designated unsuitable or for which such designation has been requested or terminated.

§ 947.770 General requirements for permits and exploration procedures.

(a) Part 770 of this chapter, *General Requirements for Permit Systems Under State Programs*, shall apply to surface coal mining and exploration operations.

(b) The Secretary shall coordinate, to the extent practicable, his responsibilities under the following Federal laws with the relevant Washington State laws to avoid duplication:

	Federal law	Washington law
(1)	Clean Water Act, as amended, 33 U.S.C. 1251 *et seq.*	Water Pollution Control Act, Chapter 90.48 RCW.
(2)	Clean Air Act, as amended, 42 U.S.C. 7401 *et seq.*	Washington Clean Air Act, Chapter 70.94 RCW.
(3)	Resource Conservation and Recovery Act, 42 U.S.C. 3251 *et seq.*	Solid Waste Management Act, Chapter 70.95 RCW; Hazardous Waste Disposal Act, Chapter 70.105 RCW.
(4)	National Historic Preservation Act, 16 U.S.C. 470 *et seq.*	Indian Graves and Records, Chapter 27.44 RCW.
(5)	Archeological and Historic Preservation Act, 16 U.S.C. 469a *et seq.*	Archeological Sites and Resources, Chapter 27.53 RCW. Office of Archeology and Historic Preservation, Chapter 43.51A RCW.
(6)	National Environmental Policy Act, 42 U.S.C. 4321 *et seq.*	State Environmental Policy Act, Chapter 43.21C RCW.
(7)	Coastal Zone Management Act, 16 U.S.C. 1451, 1453-1464	Shoreline Management Act, Chapter 90.58 RCW.
(8)	Section 208 of the Clean Water Act, as amended, 33 U.S.C. 1251 *et seq.*	Water Pollution Control Act, Chapter 90.48 RCW, Washington Forest Practices Act, Chapter 76.09 RCW.
(9)	Endangered Species Act, 16 U.S.C. 1531 *et seq.*	Natural Area Preserves Act (Plants), Chapter 79.70 RCW; Department of Game, Chapter 43.17 RCW; Game Commission, Chapter 77.08 RCW.

	Federal law	Washington law
(10)	Fish and Wildlife Coordination Act, 16 U.S.C. Sections 661-667	Water Resources Act of 1971, Chapter 90.54 RCW; Minimum Water Flows and Levels, Chapter 90.22 RCW.
(11)	Noise Control Act, 42 U.S.C. Section 4903	Noise Control Act of 1974, Chapter 70.107 RCW.
(12)	Bald Eagle Protection Act, 16 U.S.C. 668-668(d)	

(c) The following State permits shall be coordinated by the Secretary to avoid duplication to the extent possible:

(1) Department of Ecology:

Surface Water Rights Permit, RCW 90.03.250
Dam Safety Approval, RCW 90.03.350
Reservoir Permit, RCW 90.03.370
Approval of Change of Place or Purpose of Use (water); RCW 90.03.380
Ground Water Permit, RCW 90.44.050
New Source Construction Approval, RCW 70.94.152
Burning Permit, RCW 70.94.650
Flood Control Zone Permit RCW 86.16.080
Waste Discharge Permit, RCW 90.48.180
National Pollution Discharge Elimination System (NPDES) Permit, RCW 90.48
Approval of Change of Point of Diversion, RCW 90.03.380
Sewage Facilities Approval, RCW 90.48.110
Water Quality Certification, RCW 90.48.160

(2) Department of Natural Resources:

Burning Permit, RCW 76.04.150 & .170
Dumping Permit, RCW 76.04.242
Operating Permit for Machinery, RCW 76.04.275
Cutting Permit, RCW 76.08.030
Forest Practices, RCW 76.09.060
Right of Way Clearing, RCW 76.04.310
Drilling Permit, RCW 78.52.120

(3) Regional Air Pollution Control Agencies:

New Source Construction Approval, RCW 70.94.152
Burning Permit, RCW 70.94.650

(4) Department of Fisheries: Hydraulic Permit, RCW 75.20

(5) Department of Game: Hydraulic Permit, RCW 75.20.100

(6) Department of Social Health Services:

Public Sewage, WAC 248.92
Public Water Supply, WAC 248.54

(7) Department of Labor and Industries:

Explosive license, RCW 70.74.135
Blaster's license, WAC 296.52.040
Purchaser's license, WAC 296.52.220
Storage Magazine license, WAC 296.52.170

(8) Cities and Counties:

New Source Construction Approval, RCW 70.94.152
Burning Permit, RCW 70.94.650
Shoreline Substantial Develoment Permit, RCW 90.58.140
Zoning and Building Permits, Local Ordinances

(d) Where applicable, no person shall conduct coal exploration operations which result in the removal of more than 250 tons in one location or surface coal mining and reclamation operations without first obtaining permits required by the State of Washington.

§ 947.771 General requirements for permits and permit applications.

(a) Part 771 of this chapter, *General Requirements for Permits and Permit Applications,* shall apply to any person who makes application for a permit to conduct surface coal mining and reclamation operations.

(b) Any person who wishes to conduct new surface coal mining and reclamation operations shall file a complete application at least 12 months prior to the date upon which permit issuance is desired, and shall pay to the Secretary a permit fee in acordance with 30 CFR 736.25.

(c) Any person who wishes to revise a permit shall submit a complete application as early as possible prior to the date upon which permit issuance is desired and shall pay to the Secretary a fee in accordance with 30 CFR 736.25.

§ 947.776 General requirements for coal exploration.

(a) Part 776 of this chapter, *General Requirements for Coal Exploration,* shall apply to any person who conducts or seeks to conduct coal exploration operations.

(b) The Office shall make every effort to act on an exploration application within 60 days of receipt or such longer time as may be reasonable under the circumstances. If additional time is needed, the Director shall notify the applicant within 15 days of receipt that more time is necessary to complete review of the application and set forth the reasons and the additional time that is needed.

§ 947.778 Surface mining permit applications—minimum requirements for legal, financial, compliance, and related information.

Part 778 of this chapter, *Surface Mining Permit Applications—Minimum Requirements for Legal, Financial, Compliance, and Related Information,* shall apply to any person who makes application for a permit to conduct surface coal mining and reclamation operations.

§ 947.779 Surface mining permit applications—minimum requirements for information on environmental resources.

Part 779 of this chapter, *Surface Mining Permit Applications—Minimum Requirements for Information on Environmental Resources,* shall apply to any person who makes application to conduct surface coal mining and reclamation operations.

§ 947.780 Surface mining permit application—minimum requirements for reclamation and operation plan.

(a) Part 780 of this chapter, *Surface Mining Permit Application—Minimum Requirements for Reclamation and Operation Plan,* shall apply to any person who makes application to conduct surface coal mining and reclamation operations, except for § 780.15(a) of that part.

(b) Any applicant for a surface coal mining permit which is to produce more than 1,000,000 tons per year shall demonstrate compliance with local Air Pollution Control Authorities and the Washington Clean Air Act, RCW 70.94.

(c) Any applicant for a surface mining permit shall describe the steps taken to comply with the Washington Water Pollution Control Act, RCW 90.48.

[48 FR 7883, Feb. 24, 1983, as amended at 48 FR 22292, May 18, 1983]

§ 947.782 Underground mining permit applications—minimum requirements for legal, financial, compliance, and related information.

Part 782 of this chapter, *Underground Mining Permit Applications—Minimum Requirements for Legal, Financial, Compliance, and Related Information,* shall apply to any person who makes application for a permit to conduct underground coal mining operations.

§ 947.783 Underground mining permit applications—minimum requirements for information on environmental resources.

Part 783 of this chapter, *Underground Mining Permit Applications—Minimum Requirements for Information on Environmental Resources,* shall apply to any person who submits an application to conduct underground coal mining operations.

§ 947.784 Underground mining permit applications—minimum requirements for reclamation and operation plan.

(a) Part 784 of this chapter, *Underground Mining Permit Applications—Minimum Requirements for Reclamation and Operation Plan,* shall apply to any person who makes application to conduct underground coal mining operations.

(b) Any application for an underground mining permit which will produce more than 1,000,000 tons per year shall demonstrate specific compliance with local Air Pollution Control Authorities and the Washington Clean Air Act, RCW 70.94.

(c) Any applicant for an underground mining permit shall also indicate how compliance will be achieved with the Washington Water Pollution Control Act, RCW 90.48.

§ 947.785 Requirements for permits for special categories of mining.

Part 785 of this chapter, *Requirements for Permits for Special Categories of Mining,* shall apply to each person who makes application for a permit to conduct certain categories of surface coal mining and reclamation operations as specified therein.

§ 947.786 Review, public participation, and approval or disapproval of permit applications and permit terms and conditions.

(a) Part 786 of this chapter, *Review, Public Participation, and Approval or Disapproval of Permit Applications and Permit Terms and Conditions*, shall apply to the review of applications made by any person for surface coal mining and reclamation operations.

(b) The Secretary shall provide a copy of the decision to grant or deny a permit application to the Washington Department of Natural Resources, the Department of Ecology and to the county Department of Planning, if any, in which the operation is located.

§ 947.787 Administrative and judicial review of decisions on permit applications.

Part 787, *Administrative and Judicial Review of Decisions by Regulatory Authority on Permit Applications*, shall apply to the review of decisions on permit applications for surface coal mining and reclamation operations.

§ 947.788 Permit reviews, revisions, and renewals, and transfer, sale, and assignment of rights granted under permits.

Part 788 of this chapter, *Permit Reviews, Revisions, and Renewals, and Transfer, Sale, and Assignment of Rights Granted Under Permits*, shall apply to review, revision, and renewal of permits for surface coal mine operations, and to transfer, sale, and assignment of rights granted under permits.

§ 947.795 Small operator assistance.

Part 795 of this chapter, *Small Operator Assistance*, shall apply to any person making application for assistance under the small operator assistance program.

§ 947.800 Requirements for bonding of surface coal mining and reclamation operations.

Part 800 of this chapter, *Requirements for Bonding of Surface Coal Mining and Reclamation Operations Under Regulatory Programs*, shall apply to all surface coal mining and reclamation operations.

§ 947.815 Performance standards—coal exploration.

(a) Part 815 of this chapter, *Permanent Program Performance Standards—Coal Exploration*, shall apply to any person conducting coal exploration operations.

(b) Any person who conducts coal exploration operations shall comply with the Washington Forest Practices Act, RCW 76.09, and regulations promulgated pursuant to it.

§ 947.816 Performance standards—surface mining activities.

(a) Part 816 of this chapter, *Permanent Program Performance Standards—Surface Mining Activities*, shall apply to any person who conducts surface coal mining and reclamation operations.

(b) All operators shall have a plan of reclamation approved by the Washington Department of Fisheries for operation in affected streams, RCW 75, and shall comply with the Hydraulic Project Approval Law, RCW 75.20.100, the Shoreline Management Act, RCW 90.58, the Forest Practices Act, RCW 76.09, the Water Pollution Control Act, RCW 90.48, the Minimum Water Flows and Levels Act, RCW 90.22, and the Pesticide Control Act, RCW 15.58, and regulations promulgated pursuant to these laws.

§ 947.817 Performance standards—underground mining activities.

(a) Part 817 of this chapter, *Permanent Program Performance Standards—Underground Mining Activities*, shall apply to any person who conducts underground coal mining operations.

(b) All operators shall have a plan of reclamation approved by the Washington Department of Fisheries for operation in affected streams, RCW 75, and shall comply with the Hydraulic Project Approval Law, RCW 75.20.100, the Shoreline Management Act, RCW 90.58, the Forest Practices Act, RCW, 76.09, the Water Pollution Control Act, RCW 90.48, the Minimum Water Flows and Levels Act, RCW 90.22, the

Pesticide Control Act, RCW 15.58, and the Washington Water Code, RCW 90.03, and regulations promulgated pursuant to these laws.

§ 947.818 Special performance standards—concurrent surface and underground mining.

Part 818 of this chapter, *Special Permanent Program Performance Standards—Concurrent Surface and Underground Mining,* shall apply to any person who conducts concurrent surface and underground coal mining operations.

§ 947.819 Special performance standards—auger mining.

Part 819 of this chapter, *Special Permanent Program Performance Standards—Auger Mining,* shall apply to any person who conducts surface coal mining operations which include auger mining.

§ 947.822 Special performance standards—operations on alluvial valley floors.

Part 822 of this chapter, *Special Performance Standards—Operations on Alluvial Valley Floors,* shall apply to any person who conducts surface coal mining and reclamation operations on alluvial valley floors, except in those coalfields in Washington west of the crest of the Cascade Mountain Range.

[48 FR 22292, May 18, 1983]

§ 947.823 Special performance standards—operations on prime farmland.

Part 823 of this chapter, *Special Permanent Program Performance Standards—Operations on Prime Farmland,* shall apply to any person who conducts surface coal mining and reclamation operations on prime farmland.

§ 947.824 Special performance standards—mountaintop removal.

Part 824 of this chapter, *Special Permanent Program Performance Standards—Mountaintop Removal,* shall apply to any person who conducts surface coal mining operations constituting mountaintop removal mining.

§ 947.826 Special performance standards—operations on steep slopes.

Part 826 of this chapter, *Special Permanent Program Performance Standards—Operations on Steep Slopes,* shall apply to any person who conducts surface coal mining and reclamation operations on steep slopes.

§ 947.827 Special performance standards—coal processing plants and support facilities not located at or near the minesite and not within the permit area for a mine.

Part 827 of this chapter, *Special Permanent Program Performance Standards—Coal Processing Plants and Support Facilities Not Located at or Near the Minesite or Not Within the Permit Area for a Mine,* shall apply to any person who conducts surface coal mining and reclamation operations which include the operation of coal processing plants and support facilities not located at or near the minesite and not within the permit area for a mine.

§ 947.828 Special performance standards—in situ processing.

Part 828 of this chapter, *Special Permanent Program Performance Standards—In Situ Processing,* shall apply to any person who conducts in situ processing activities.

§ 947.842 Federal inspections.

(a) Part 842 of this chapter, *Federal Inspections,* shall apply to all exploration and surface coal mining and reclamation operations.

(b) Upon request OSM shall furnish a copy of any inspection report to the Washington Department of Natural Resources and the Department of Ecology. If there is a planning department in the county government where the operation is located, a copy of the enforcement action shall be furnished to that agency.

§ 947.843 Federal enforcement.

(a) Part 843 of this chapter, *Federal Enforcement,* shall apply when enforcement action is required for violations on surface coal mining and reclamation operations.

(b) Upon request OSM shall furnish a copy of each enforcement action document and order to show cause issued pursuant to this section to the Washington Department of Natural Resources and the Department of Ecology. If there is a planning department in the county government where the operation is located, a copy of the enforcement action shall be furnished to that agency.

§ 947.845 Civil penalties.

Part 845 of this chapter, *Civil Penalties*, shall apply when civil penalties are assessed for violations on surface coal mining and reclamation operations.

§ 947.955 Certification of blasters.

Part 955 of this chapter, *Certification of Blasters in Federal Program States and on Indian Lands*, shall apply to the training, examination and certification of blasters for surface coal mining and reclamation operations.

[51 FR 19462, May 29, 1986]

PART 948—WEST VIRGINIA

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948.25 Approval of abandoned mine land reclamation plan amendments.
948.30 State-Federal cooperative agreement.

AUTHORITY: Pub. L. 95-87, Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*).

§ 948.1 Scope.

This part contains all rules applicable only within West Virginia that have been adopted under the Surface Mining Control and Reclamation Act of 1977.

[46 FR 5954, Jan. 21, 1981]

§ 948.10 State regulatory program approval.

The West Virginia State program, as submitted on March 3, 1980, as clarified on July 16, 1980, and as resubmitted on December 19, 1980, is conditionally approved, effective January 21, 1981. Beginning on that date and continuing until July 11, 1985, the Department of Natural Resources was deemed the regulatory authority in West Virginia for all surface coal mining and reclamation operations and all exploration operations on non-Federal and non-Indian lands. Beginning on July 11, 1985, the Department of Energy shall be deemed the regulatory authority, pursuant to the program transfer provisions of the Enrolled Committee Substitute for House Bill 1850 as signed by the Governor of West Virginia on May 3, 1985.

Copies of the conditionally approved program, as amended, are available at:

(a) Office of Surface Mining, Charleston Field Office, 603 Morris Street, Charleston, West Virginia 25301. Telephone: (304) 347-7158.
(b) Office of Surface Mining, 1100 "L" Street NW., Room 5124, Washington, D.C. 20240. Telephone: (202) 343-4855.
(c) West Virginia Department of Energy, Division of Mines and Minerals, 1615 Washington Street, East Charleston, West Virginia 25305. Telephone: (304) 348-3267.

[50 FR 28323, July 11, 1985]

§ 948.11 Conditions of State regulatory program approval.

(a) The approval of the West Virginia State program is subject to the State revising its program to correct the deficiencies listed in this section. The program revisions may be made, as appropriate, to the statute, the regulations, the program narrative, or the Attorney General's opinion. This section indicates, for the general guidance of the State, the component of the program to which the Secretary recommends the change be made.

(1) Steps will be taken to terminate the approval found in § 948.10 unless West Virginia submits to the Secretary, by January 11, 1986, copies of regulations or other program amendments which include provisions for au-

gering on previously mined areas which are no less effective than 30 CFR 819.19(b) (1) and (3) and which are no less stringent than sections 102 and 515 SMCRA.

(2)—(7) [Reserved]

(8) Steps will be taken to terminate the approval found in § 948.10 unless West Virginia submits to the Secretary, by January 11, 1986, copies of promulgated regulations or other program amendments which eliminate the waiver of stability analyses for non-impounding coal waste piles where site conditions indicate that failure will not occur, which require that regular inspections be conducted during the placement and compaction of coal mine waste materials as required by 30 CFR 816.83(d)(1) and 817.83(d)(1), and which require that the engineer provide the regulatory authority with a certified report promptly after each inspection of coal refuse impoundments and non-impounding coal refuse areas as required by 30 CFR 816.49(a)(10), 817.49(a)(10), 816.83(d)(2) and 817.83(d)(2).

(9)—(18) [Reserved]

(19) Steps will be taken to terminate the approval found in § 948.10 unless West Virginia submits to the Secretary, by January 11, 1986, copies of promulgated regulations or other program amendments which require that the applicant list in the permit application all violation notices received by that person, or by any subsidiary, affiliate or persons controlled by or under common control with the applicant, in connection with any surface coal mining and reclamation operation during the three-year period preceding the date of application as required by 30 CFR 778.14(c).

(20)—(37) [Reserved]

(38) Steps will be taken to terminate the approval found in § 948.10 unless West Virginia submits to the Secretary, by January 11, 1986, copies of promulgated regulations or other program amendments which require that coal exploration applications contain a map showing the location of critical habitats of any endangered or threatened species listed pursuant to the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*) as required by 30 CFR 772.12(b)(12).

(39) Steps will be taken to terminate the approval found in § 948.10 unless West Virginia submits to the Secretary, by January 11, 1986, copies of promulgated regulations or other program amendments which (i) require the use of a statistically valid sampling technique to evaluate the success of revegetation in all instances as required, (ii) establish productivity success standards and require productivity measurements when determining the success of revegetation efforts on grazing land, pasture land and crop land, and (iii) require the use of the 90 percent statistical confidence interval and a one-sided test with a 0.10 alpha error in data analysis and in the design of sampling techniques, all in a manner no less effective than 30 CFR 816.116 and 817.116.

(40) [Reserved]

(41) Steps will be taken to terminate the approval found in § 948.10 unless West Virginia submits to the Secretary, by January 11, 1986, copies of promulgated regulations or other program amendments which eliminate those provisions allowing the Director to decline to issue a show cause order or to vacate an outstanding show cause order due to exceptional factors beyond the operator's control.

[46 FR 5954, Jan. 21, 1981, as amended at 50 FR 28341, July 11, 1985]

§ 948.12 State program provisions found inconsistent with Federal law and less effective than Federal regulations.

(a) Section 22A-3-15(g) of the Code of West Virginia is found inconsistent with section 521(a)(1) of SMCRA to the extent that it states: "*Provided*, That except for deliberate and willful acts, the permittee, his authorized agent or employees, and the inspector whom such person is accompanying, shall not be held civilly liable for any injury to such person during the inspection trip."

(b) Section 8B.10 of West Virginia's regulations is disapproved to the extent that it provides that any in situ mining in the State will be conducted in accordance with Sections 3, 4, 7 and 8 of the State's regulations.

(c) Section 22A-3-3(w)(2) of the Code of West Virginia is found inconsistent with Section 701(28) of SMCRA to the extent that it states: "*Provided, however,* That permanent facilities not within the area being mined and not directly involved in the excavation, loading, storage, or processing of the coal shall not be subject to the provisions of this article. Such facilities include, but are not limited to, offices, garages, bathhouses, parking areas, and maintenance and supply areas."

(d) Section 22A-3-9a(a)(8) of the Code of West Virginia is found less effective than 30 CFR 700.11(b) and the definition of "affected area" at 30 CFR 701.5 to the extent that the phrase "exclusive of roadways and temporary spoil placement" could be interpreted as excluding such areas when determining the size of the affected area.

(e) Section 22A-3-23(c)(3) of the Code of West Virginia is found inconsistent with Section 519(c)(3) of SMCRA to the extent that it states: "*Provided, however,* That such a release may be made where the quality of the untreated postmining water discharged is better than or equal to the premining water quality discharged from the mining site."

(f) Section 22A-3-12(e) of the Code of West Virginia is found inconsistent with Section 515(e) of SMCRA.

(g) Section 22A-3-18(c) is found inconsistent with Section 510(c) of SMCRA to the extent that it limits its applicability to surface-mining operations "located in the State of West Virginia" and to patterns of willful violations "of this article."

(h) Section 1.02(a) of West Virginia's surface mining reclamation regulations is found less effective than the Federal regulations at 30 CFR 784.20 to the extent that it provides that "Such acknowledgement shall be deemed complete for any new permit requirements contained in these regulations and shall become a part of the permit;" and section 1.02(c) of the West Virginia regulations is found less effective than the Federal regulations at 30 CFR 784.20 to the extent that it provides that "Such acknowledgement shall be deemed sufficient to make the application complete for any new permit requirements contained in these regulations and shall become a part of the permit."

(i) Section 3E.01 of West Virginia's surface mining reclamation regulations is found inconsistent with section 515(b)(10(B)(ii) of SMCRA and less effective than the Federal regulations to the extent that it provides that for the purposes of section 13(b)(10) of the Act (now § 22A-3-12(b)(10) of the West Virginia Energy Act) an approved person shall be a "licensed land surveyor."

[48 FR 52053, Nov. 16, 1983, as amended at 50 FR 28323 and 28342, July 11, 1985]

§ 948.13 State statutory and regulatory provisions set aside.

(a) The following wording in section 22A-3-3(w)(2) of the Code of West Virginia is inconsistent with section 701(28)(B) of the Surface Mining Control and Reclamation Act of 1977 and is hereby set aside:

> Provided, however, That permanent facilities not within the area being mined and not directly involved in the excavation, loading, storage, or processing of the coal shall not be subject to the provisions of this article. Such facilities include, but are not limited to, offices, garages, bathhouses, parking areas, and maintenance and supply areas.

(b) Section 22A-3-9a(a)(8) of the Code of West Virginia is inconsistent with section 528(2) of the Surface Mining Control and Reclamation Act of 1977 and less effective than the definition of "affected area" at 30 CFR 701.5. This provision is hereby set aside to the extent that it could be interpreted as excluding roadways and temporary spoil placement sites from the area considered to be affected for purposes of determining eligibility for the special regulatory program governing operations two acres or smaller in size.

(c) The following wording in section 22A-3-23(c)(3) of the Code of West Virginia is inconsistent with section 519(c)(3) of the Surface Mining Control and Reclamation Act of 1977 and is hereby set aside:

> Provided, however, That such a release may be made where the quality of the untreated postmining water discharged is

better than or equal to the premining water quality discharged from the mining site.

(d) Section 22A-3-12(e) of the Code of West Virginia is inconsistent with section 515(e) of the Surface Mining Control and Reclamation Act of 1977 and is hereby set aside in its entirety.

(e) The following wording in section 22A-3-15(g) of the Code of West Virginia is inconsistent with section 521(a)(1) of the Surface Mining Control and Reclamation Act of 1977 and is hereby set aside:

> Provided, That except for deliberate and willful acts, the permittee, his authorized agent or employees, and the inspector whom such person is accompanying, shall not be held civilly liable for any injury to such person during the inspection trip.

(f) The following italicized wording in section 22A-3-18(c) of the Code of West Virginia is inconsistent with section 510(c) of the Surface Mining Control and Reclamation Act of 1977 and is hereby set aside:

> (c) Where information available to the department indicates that any surface-mining operation *located in the State of West Virginia*, owned or controlled by the applicant, is currently in violation of this article or other environmental laws or regulations, the permit shall not be issued until the applicant submits proof that such violation has been corrected or is in the process of being corrected to the satisfaction of the commissioner or the department or agency which has jurisdiction over the violation, and no permit may be issued to any applicant after a finding by the commissioner, after an opportunity for hearing, that the applicant or the operator specified in the application controls or has controlled mining operations with a demonstrated pattern of willful violations *of this article* of such nature and duration with such irreparable damage to the environment as to indicate an intent not to comply with the provisions of this article: Provided, That if the commissioner finds that the applicant is or has been affiliated with, or managed or controlled by, or is or has been under the common control of, other than as an employee, a person who has had a surface-mining permit revoked or bond or other security forfeited for failure to reclaim lands as required by the laws of this State, he shall not issue a permit to the applicant: Provided, however, That subject to the discretion of the commissioner and based upon a petition for reinstatement, permits may be issued to any applicant if, after the revocation or forfeiture, the operator whose permit has been revoked or bond forfeited shall have paid into the special reclamation fund any additional sum of money determined by the commissioner to be adequate to reclaim the disturbed area, and the commissioner is satisfied that the petitioner will comply with this article.

[50 FR 35084, Aug. 29, 1985]

§ 948.15 Approval of regulatory program amendments.

(a) West Virginia's coal refuse disposal regulations, as submitted to OSM on October 29, 1981, are approved effective May 11, 1982, subject to the conditions set forth in § 948.11. The revised regulations replace Section 10 of West Virginia's surface mining reclamation regulations contained in the State's conditionally approved program of January 21, 1981.

(b) The amendment to Section E.03 of the State's coal refuse disposal regulations, which was submitted to OSM on June 17, 1982, is approved effective September 10, 1982.

(c) The following amendments, as submitted to OSM on September 14, 1982, and October 29, 1982, are approved in part effective March 1, 1983: West Virginia's revised surface mining reclamation regulations promulgated on October 28, 1982, and an actuarial study regarding West Virginia's alternative bonding system.

(d) The following regulatory and statutory amendments submitted to OSM on February 16, April 29, June 15 and September 13, 1983, which were intended to satisfy the remaining conditions of approval on the West Virginia program, are approved effective July 15, 1983, to coincide with the date of expiration of the State's emergency regulations and are subject to the conditions set forth in § 948.11: West Virginia's revised surface mining reclamation regulations as filed with the West Virginia Secretary of State on February 3, 1983, and submitted on February 14, 1983, along with the notice that the Department of Natural Resources Technical Handbook of Standards and Specifications for Mining Operations will now serve as a technical guideline, rather than regulation; amendments to the West Virginia Surface Coal Mining and Reclamation Act as submitted on April 29, 1983; revisions to the West Virginia surface mining reclamation regulations as submitted on June 13, 1983; and further revisions to the State's surface mining reclamation regulations dated July 15, 1983, and submitted on September 13, 1983, concerning applicability, the inclusion of new bond release procedures for interim program permits, the deletion of the incidental mining requirements at Section 9 of its regulations and the correction of typographical and punctuation errors in its regulations.

(e) The following amendment submitted to OSM on January 12, 1984, as modified on June 18, 1984, is approved effective September 20, 1984: West Virginia's blaster certification program, as contained in the proposed West Virginia Administrative Regulations, Department of Mines, Chapter 22-4 Series ———, submitted to OSM on June 18, 1984, and all other items as submitted by West Virginia on January 12, 1984, and modified on June 18, 1984. This approval is contingent on promulgation of the above referenced proposed regulations.

(f) The following amendment submitted to OSM on November 20, 1984, is approved effective April 23, 1985: Amendments to West Virginia's blaster certification program, as contained in the proposed West Virginia Administrative Regulations, Department of Mines, Chapter 22-4 Series ———, Section 6.01(B) and Section 9, submitted to OSM on November 20, 1984. This approval is contingent upon the State's promulgation of the proposed regulations in the identical form submitted for OSM's review and approval.

(g) The following amendment, as submitted to OSM on May 20, 1985, and clarified on April 24, May 10, May 20, and May 28, 1985, is approved, with the exceptions listed in 30 CFR 948.12 (a), (c), (d), (e), (f), and (g), effective July 11, 1985: The Enrolled Committee Substitute for House Bill 1850, which revises the Code of West Virginia to provide for creation of a Department of Energy and the transfer of program authority from the Department of Natural Resources to the Department of Energy.

(h) The following amendments submitted to OSM on March 30, 1984, October 30, 1984, and June 14, 1985, are approved effective August 27, 1984, subject to the remaining conditions set forth in § 948.11: West Virginia's revised surface mining reclamation and coal refuse disposal regulations dated July 15, 1983, and July 22, 1981, respectively; the permit addendum and Chapter 20, Revegetation, of the Technical Handbook for Surface Mining; West Virginia's revised surface mining reclamation and coal refuse disposal regulations dated August 27, 1984; the addendum to a permit or significant revision to a permit; the coal exploration approval document; the State's revised civil penalty procedures, which include a Code of Violations for determining assessable and non-assessable violations; and West Virginia's final surface mining reclamation and coal refuse disposal regulations, which were approved by the West Virginia Legislature on April 13, 1985, and which took effect on June 13, 1985.

(i) The financial analysis and supporting documentation submitted by West Virginia on November 11, 1985 is approved as being adequate to demonstrate that sufficient money will be available in the special reclamation fund both to complete the approved reclamation plans for any areas that may be in default at any time and to cover the general administrative expense withdrawals proposed for fiscal year 1985-86. This amendment also prohibits all withdrawals for noncoal administrative expenses and limits all administrative expense withdrawals to an amount which cumulatively does not exceed ten percent of the fund's current assets as of September 30, 1985.

Before making any withdrawals in subsequent fiscal years to cover administrative expenses unrelated to bond forfeitures, West Virginia must submit, for OSMRE concurrence, a comprehensive analysis demonstrating that sufficient money will be available in the special reclamation fund both to promptly complete the approved reclamation plans for any areas that may be in default at any time and to cover the administrative expense withdrawals proposed under section 22A-3-11(g) of the Code of West Virginia.

[50 FR 28323, July 11, 1985, as amended at 50 FR 28342, July 11, 1985; 51 FR 9651, Mar. 20, 1986]

§ 948.16 Required program amendments.

Pursuant to 30 CFR 732.17, West Virginia is required to submit the following proposed program amendments by the dates specified:

(a) By November 26, 1985, West Virginia must submit copies of proposed regulations or otherwise propose to amend its program to provide that all surface blasting operations (including those using less than five pounds and those involving surface activities at underground mining operations) shall be conducted under the direction of a certified blaster.

(b) [Reserved]

(c) By March 15, 1986, West Virginia must submit copies of statutory revisions to correct or otherwise eliminate certain errors in Chapter 22A of the Code of West Virginia as follows:

(1) Section 22A-1-1 must be revised to state that the Division of Mines and Minerals is created under section 22-1-7, not § 22-1-6.

(2) Section 22A-3-3(w)(1) must be revised to insert a semicolon between "reclamation" and "in situ" and a comma between "cleaning" and "concentrating".

(3) Section 22A-3-9a must be revised throughout to replace "director" with "commissioner" to maintain consistency with the West Virginia Energy Act as a whole and section 22-1-15 in particular.

(4) Section 22A-3-9a(a)(6) must be revised to state that the reclamation plan requirements are contained in Section 10, not Section 11.

(5) Section 22A-3-9a(a)(7) must be revised to state that the insurance requirements are contained in Section 9, not Section 10.

(6) Section 22A-3-9a(d) must be reworded to clarify its meaning.

(7) Section 22A-3-26(d) must be revised to state that the requirements for operations two acres or smaller in size are contained in Section 9a, not 10a.

(8) Section 22A-3-17(d)(3) must be recodified as a separate subsection to clarify that appeal rights and procedures apply to all notices, orders and decisions of the Commissioner, not just those relating to civil penalty assessments.

(9) Section 22A-3-17(d)(4) must be recodified as a separate subsection to clarify that temporary relief provisions apply to all enforcement actions and orders, but not to civil penalty assessments.

[50 FR 28324, July 11, 1985 and 50 FR 38652, Sept. 24, 1985, as amended at 51 FR 9651, Mar. 20, 1986]

§ 948.20 Approval of State abandoned mine land reclamation plan.

The West Virginia Abandoned Mine Reclamation Plan as submitted on October 29, 1980, and as amended December 12, 1980, is approved effective February 23, 1981. Copies of the approved plan are available at the following locations:

(a) West Virginia Department of Energy, Division of Mines and Minerals, 1615 Washington Street, East, Charleston, West Virginia 25305. Telephone (304) 348-3267.

(b) Office of Surface Mining, Charleston Field Office, 603 Morris Street, Charleston, West Virginia 25301. Telephone: (304) 347-7158.

(c) Office of Surface Mining, 1100 L Street, NW., Room 5124, Washington, D.C. 20240. Telephone: (202) 343-4855.

[50 FR 28324, July 11, 1985]

§ 948.25 Approval of abandoned mine land reclamation plan amendments.

(a) The following amendment as submitted to OSM on May 20, 1985, and clarified on April 24, May 10, and May 20 and May 28, 1985, is approved: The Enrolled Committee Substitute for House Bill 1850, which revised the Code of West Virginia to provide for the creation of a Department of Energy and the transfer of program authority from the Department of Natural Resources to the Department of Energy.

[50 FR 28324, July 11, 1985]

§ 948.30 State-Federal Cooperative Agreement.

COOPERATIVE AGREEMENT

This is a Cooperative Agreement (Agreement) between the State of West Virginia (State) acting by and through the Governor, and the United States Department of the Interior (Department), acting by and through the Secretary of the Interior (Secretary).

Article I: Introduction, Purpose and Responsible Administrative Agency

A. *Authority:* This Agreement is authorized by section 523(c) of the Surface Mining Control and Reclamation Act (the Federal Act), 30 U.S.C. 1273(c), which allows a State with a permanent regulatory program approved under 30 U.S.C. 1253 to elect to enter into an Agreement for the regulation and control of surface coal mining and reclamation operations on Federal lands within that State. This Agreement provides for such regulation within West Virginia except on lands containing leased Federal coal consistent with the State and Federal Acts, the West Virginia State Program (State program), and the Federal Lands Program (section 523(a) of the Federal Act and 30 CFR Parts 740-745).

B. *Purpose:* The purpose of the Agreement is to: (1) Foster State-Federal cooperation in the regulation of surface coal mining and reclamation operations on Federal lands; (2) eliminate unnecessary intergovernmental overlap and duplication; and (3) provide uniform and effective application of the State program on all lands except those containing leased Federal coal in West Virginia.

C. *Responsible Administrative Agencies:* The Department of Natural Resources, Reclamation Division (DNR) is responsible for administering this Agreement on behalf of the Governor on Federal lands throughout the State. The Office of Surface Mining Reclamation and Enforcement (OSM) is responsible for administering this Agreement on behalf of the Secretary, in accordance with the regulations in 30 CFR Chapter VII. The Federal lands in West Virginia covered by this Agreement are predominantly those under the jurisdiction of the United States Department of Agriculture, Forest Service. It is understood by all parties that the Forest Service or the Federal land management agency, if other than the Forest Service, will continue to govern mining operations on Federal lands covered by this agreement pursuant to laws, regulations, agreements, and restrictions for which the respective agency is responsible. These requirements are in addition to the requirements discussed in this Agreement.

Article II: Effective Date

After it has been signed by the Governor and the Secretary, the Agreement shall take effect upon publication in the FEDERAL REGISTER as a final rule. This Agreement shall remain in effect until terminated as provided in Article X.

Article III: Definitions

Terms and phrases used in this Agreement which are defined in 30 CFR Parts 700, 701 and 740, and the State program shall be given the meanings set forth in said definitions.

Article IV: Applicability

A. *Applicability to Federal Lands:* In accordance with the Federal Lands Program in 30 CFR Part 740, the laws, rules, terms, and conditions of the State program (as conditionally approved effective January 21, 1981, 30 CFR Part 948, or as hereinafter amended in accordance with 30 CFR 732.17) are applicable to Federal lands within West Virginia. This Agreement does not apply to operations on Federal lands containing leased Federal coal.

B. *Filing of Appeals:* Orders and decisions issued by DNR in accordance with the State program that are appealable shall be appealed to the State of West Virginia's Reclamation Board of Review. Orders and decisions issued by the Department that are appealable shall be appealed to the Department of the Interior's Office of Hearings and Appeals.

Article V: Requirements for Cooperative Agreement

The Governor and the Secretary affirm that they will comply with all of the provisions of this Agreement and will continue to meet all the conditions and requirements specified in this Article.

A. *Authority of State Agency:* DNR has and shall continue to have authority under State law to carry out this Agreement.

B. *Funds:* Upon application by the DNR and subject to the availability of appropriations, the Department shall provide the State with the funds to defray the costs associated with carrying out responsibilities under this Agreement as provided in section 705(c) of the Act and 30 CFR 735.16. If sufficient funds have not been appropriated to OSM, OSM and DNR shall promptly meet to decide on measures that will insure that mining operations are regulated in accordance with the State program. If agreement cannot be reached, then either party may terminate the Agreement in accordance with Article X.

Funds provided to the State shall be adjusted in accordance with Office of Management and Budget Circular A-102, Attachment E, and shall be reduced by the amount of fees collected by the State that are attributable to the Federal lands covered by this Agreement.

C. *Reports and Records:* DNR shall make annual reports to OSM pursuant to 30 CFR 745.12(d), containing information respecting its compliance with the terms of this Agreement. Upon request, DNR and OSM shall exchange information developed under this Agreement except where prohibited by Federal law. OSM shall provide DNR with a copy of any final evaluation report concerning State administration and enforcement of this Agreement.

D. *Personnel:* DNR shall provide the necessary personnel to fully implement this Agreement in accordance with the provisions of the Federal and State Acts and the State program.

E. *Equipment and Laboratories:* DNR shall assure itself access to equipment, laboratories, and facilities with which all inspections, investigations, studies, tests, and analyses can be performed and which are necessary to carry out the requirements of this Agreement.

F. *Permit Application Fees:* The amount of the fee accompanying an application for a permit shall be determined in accordance with Section 20-6-9(f) of the Code of West Virginia (1931), as amended. All permit and civil penalty fees collected from operations on Federal lands shall be retained by the State and deposited with the State Treasurer. The financial status report submitted pursuant to 30 CFR 735.26 shall include a report of the amount of permit application fees collected and attributable to Federal lands during the prior Federal fiscal year. This amount shall be disposed of in accordance with Federal regulations, and OMB Circular No. A-102, Attachment E.

Article VI: Review of a Permit Application Package

A. *Contents of Permit Application Package:* DNR and the Secretary shall require an operator proposing to conduct surface coal mining and reclamation operations on Federal lands covered by this Agreement to submit a permit application package in an appropriate number of copies to DNR. DNR will furnish OSM a copy if OSM so requests. The permit application package shall be in the form required by DNR and include any supplemental information required by OSM or the Federal land management agency. The permit application package shall include the information required by, or necessary for, DNR to make a determination of compliance under 30 CFR 740.4(c)(2) with any conditions or special requirements imposed by the Federal land management agency and with the requirements of the State program, including:

1. *W. Va. Code*, Section 20-6-1 *et seq.*, as amended;

2. Applicable regulations of the West Virginia Surface Mining Reclamation Regulations, 20-6-Series VIII (1981);

3. Requirements of the West Virginia DNR Reclamation Division "Technical Handbook of Standards and Specifications for Mining Operations (1981)."

B. *Review Procedures:* 1. DNR shall assume primary responsibility for the analysis, review, and approval or disapproval of permit application packages required by 30 CFR 740.13 for surface coal mining and reclamation operations on Federal lands in West Virginia except those containing leased Federal coal. DNR shall be the primary point of contact for operators regarding decisions on the permit application package and will be responsible for informing the applicant of all joint State-Federal or Federal determinations.

2. Upon receipt of a permit application package that involves surface coal mining and reclamation operations on Federal lands covered by this agreement, DNR shall (1) transmit a copy of the complete permit application package to the Federal land management agency with a request for review pursuant to 30 CFR 740.13(b)(4), and (2) provide OSM with relevant information to allow OSM to determine whether or not the proposed surface coal mining and reclamation operation is prohibited or limited by the requirements of section 522(e) of the Federal Act (30 U.S.C. 1272(e)) and 30 CFR Parts 760-762 with respect to Federal areas designated by Congress as unsuitable for mining. DNR shall be responsible for obtaining, in a timely manner, the views and determinations of any other Federal agencies with jurisdiction or responsibility over Federal lands affected by a permit application package in West Virginia.

3. OSM will provide technical assistance to DNR when requested if available resources allow and will process requests for determinations of compatibility and valid existing rights under 30 CFR Part 761 relating to Federal areas designated by Congress as unsuitable for mining. OSM will be responsible for ensuring that any information OSM receives from an applicant is promptly sent to DNR. OSM shall have access to DNR files concerning mines on Federal lands. The Secretary reserves the right to act independently of DNR to carry out his responsibilities under laws other than the Federal Act. A copy of all resulting correspondence with the applicant that may have a bearing on decisions regarding the permit application package shall be sent to the State.

4. DNR shall prepare the required technical analysis and written findings on the permit application package. If requested by the Federal land management agency, a draft of these documents shall be sent to it for review and comment.

5. The permit issued by DNR shall incorporate any terms or conditions imposed by the Federal land management agency, in-

cluding conditions relating to post-mining land use, and shall condition the initiation of surface coal mining operations on compliance with the requirements of the Federal land management agency. After DNR issues the decision on the permit application package, it shall send a notice to the applicant, the Federal land management agency, and OSM with a statement of findings and conclusions in support of the action.

Article VII: Inspections

DNR shall conduct inspections on Federal lands covered by this agreement and prepare and file inspection reports in accordance with the approved Program

A. *Inspection Reports:* DNR shall, within 15 days of conducting any inspection on Federal lands, file with OSM an inspection report describing (1) the general conditions of the lands under the permit; (2) whether the operator is complying with applicable performance and reclamation requirements; and (3) the manner in which specific operations are being conducted.

B. *DNR Authority:* DNR shall be the point of contact and primary inspection authority in dealing with the operator concerning operations and compliance with the requirements covered by this Agreement, except as described in this Agreement and the Secretary's regulations. Nothing in this Agreement shall prevent inspections by authorized Federal or State agencies for purposes other than those covered by this Agreement.

C. *OSM Authority:* OSM may conduct inspections of surface coal mining and reclamation operations on Federal lands for the purpose of evaluating the manner in which this Agreement is being carried out and to insure that performance and reclamation standards are being met. In order to facilitate a joint Federal-State inspection, OSM will ordinarily give DNR notice of its intent to conduct an inspection. When OSM is responsing to a citizen complaint of an imminent danger to the health or safety of the public or a significant, imminent environmental harm pursuant to 30 CFR 842.11(b)(1)(i), it will contact DNR if circumstances and time allow, prior to the Federal inspection. OSM may conduct any inspections necessary to comply with 30 CFR Part 842. If an inspection is made without DNR inspectors, OSM shall provide DNR with a copy of the inspection report within 15 days after inspection. The Secretary reserves the right to conduct inspections without prior notice to DNR to carry out his responsibilities under the Act.

D. *Witness Availability:* Personnel of the State and of the Department of the Interior shall be mutually available to serve as witnesses in enforcement actions taken by either party.

Article VIII: Enforcement

A. *DNR Inforcement:* DNR shall have primary enforcement authority on Federal lands covered by this agreement in accordance with the State program and this Agreement. During any joint inspection by OSM and DNR, DNR shall take appropriate enforcement action, including issuance of orders of cessation and notices of violation.

B. *Notification:* DNR shall promptly notify the Federal land management agency of all violations of applicable laws, regulations, orders, and approved permits subject to this Agreement and of all actions taken with respect to such violations.

C. *Secretary's Authority:* (1) This Agreement does not affect or limit the Secretary's authority to enforce provisions of laws other than the Act. (2) During an inspection made solely by OSM or any joint inspection where DNR and OSM fail to agree regarding the propriety of any particular enforcement action, OSM may take any enforcement action necessary to comply with 30 CFR Parts 843 and 845. Such enforcement action shall be based on the Act or the substantive requirements of the State program and shall be taken using the procedures and penalty system contained in 30 CFR Parts 843 and 845.

Article IX: Bonds

A. *Performance Bond:* DNR shall require all operators on Federal lands to submit a performance bond to cover the operator's responsibilities under the Federal Act and the State program, payable to both the United States and West Virginia. The performance bond shall be of sufficient amount to comply with the requirements of both State and Federal law, and release of the performance bond shall be conditioned upon compliance with all applicable requirements. DNR may release the operator from any obligation under the performance bond with the concurrence of the Federal land management agency. If this Agreement is terminated: (1) The bond will revert to being payable only to the United States to the extent that Federal lands are involved, and (2) the bond will be delivered by DNR to OSM if only Federal lands are covered by the bond.

B. *Forfeiture:* In the event of forfeiture by an operator of the performance bond for surface coal mining and reclamation operations on Federal lands covered by this agreement, the State shall use funds received from bond forfeiture and, where necessary, funds from the West Virginia Special Reclamation Fund (pursuant to Section 20-6-12(h) of the West Virginia Surface Coal Mining and Reclamation Act) to ensure that reclamation is accomplished in accordance with the State program and the approved permit.

Article X: Termination of Cooperative Agreement

This Agreement may be terminated by the Governor or the Secretary under the provisions of 30 CFR 745.15.

Article XI: Reinstatement of Cooperative Agreement

If this Agreement has been terminated in whole or in part, it may be reinstated under the provisions of 30 CFR 745.16.

Article XII: Amendment of Cooperative Agreement

This Agreement may be amended by mutual agreement of the Governor and the Secretary in accordance with 30 CFR 745.14.

Article XIII: Changes in State or Federal Standards

A. *Time for Changes:* The Secretary or the State may from time to time promulgate new Federal or State regulations, including new or revised performance or reclamation requirements or enforcement or administration procedures. OSM and DNR shall immediately inform each other of any final changes and of any effect such changes may have on the cooperative agreement. If it is determined to be necessary to keep this Agreement in force, DNR shall request necessary State legislative action and each party shall change or revise its regulations or promulgate new regulations, as applicable. Such changes shall be made under the procedures of 30 CFR Part 732 for changes to the approved State program and sections 501 and 523 of the Federal Act for changes to the Federal lands program.

B. *Copies of Changes*: The State and OSM shall provide each other with copies of any changes to their respective laws, rules, regulations, and standards pertaining to the enforcement and administration of this Agreement.

Article XIV: Changes in Personnel and Organization

DNR and the Secretary shall, consistent with 30 CFR Part 745, advise each other of changes in the organization, structure, functions, duties, and funds of the offices, departments, divisions, and persons within their organizations which could affect administration and enforcement of this Agreement. Each shall promptly advise the other in writing of changes in key personnel, including the head of a department or division, or changes in the functions or duties of persons occupying the principal offices within the structure of the program. DNR and OSM shall advise each other in writing of changes in the location of offices, addresses, telephone numbers, and changes in the names, location and telephone numbers of their respective mine inspectors and the area within the State for which such inspectors are responsible.

Article XV: Reservation of Rights

In accordance with 30 CFR 745.13, this Agreement shall not be construed as waiving or preventing the assertion of any rights that have not been expressly addressed in this Agreement that the State or the Secretary may have under other laws or regulations.

(Pub. L. 95-87 (30 U.S.C. 1201 et seq.))

Dated: February 16, 1984.

William Clark,
Secretary of the Interior.

Dated: February 24, 1984.

John D. Rockefeller IV,
Governor of West Virginia.

[49 FR 8917, Mar. 9, 1984]

PART 950—WYOMING

Sec.
950.1 Scope.
950.10 State regulatory program approval.
950.11 Terms and conditions of State program approval.
950.15 Approval of regulatory program amendments.
950.16 Required program amendments.
950.20 State-Federal cooperative agreement.
950.30 Approval of Wyoming abandoned mine reclamation plan.

§ 950.1 Scope.

This part contains all rules applicable only within the State of Wyoming which have been adopted under the Surface Mining Control and Reclamation Act of 1977.

(Sec. 503, Pub. L. 95-87 (30 U.S.C. 1253))

[45 FR 78684, Nov. 26, 1980]

§ 950.10 State regulatory program approval.

The Wyoming permanent program, as submitted on August 15, 1979, and as revised on October 23, 1979, May 30, 1980, and August 5, 1980, is approved effective November 26, 1980. Copies of the approved program are available at:

(a) Office of Surface Mining Reclamation and Enforcement, Casper Field Office, Federal Building, 100 East "B" Street, Room 2128, Casper, Wyoming 82601-1918, Telephone: (307) 328-5824.

(b) Office of Surface Mining Reclamation and Enforcement, Administrative Record, 1100 "L" Street, NW., Room 5124, Washington, DC 20240, Telephone: (202) 343-4855.

(c) Wyoming Department of Environmental Quality, Land Quality Division, Herschler Building, 122 West 25th Street, Cheyenne, Wyoming 82002, Telephone: (307) 777-7756.

[51 FR 10832, Mar. 31, 1986]

§ 950.11 Terms and conditions of State program approval.

The approval of the State program will terminate unless the following conditions are fulfilled by the dates indicated:

(a)-(b) [Reserved]

(c) On or before May 20, 1983, Wyoming must establish requirements which are consistent with the Federal attorneys' fees and intervention regulation in 43 CFR Part 4.

(30 U.S.C. 1201 *et seq.*)

[45 FR 78684, Nov. 26, 1980, as amended at 47 FR 7220, Feb. 18, 1982; 47 FR 42352, Sept. 27, 1982; 48 FR 51467, Nov. 9, 1983]

§ 950.15 Approval of regulatory program amendments.

(a) The following amendments were approved effective February 18, 1982:

(1) Wyoming's definition of "complete application" added at Chapter I, Section 2 (14) submitted March 26, 1981, to satisfy condition (a);

(2) Wyoming's assurance that the following guidelines submitted March 26, 1981 to satisfy condition (d), are enforceable as regulations:

Chapter II, Section 1.c. (maps)
Chapter II, Section 2.a. (1)(f)(ii) (topsoil)
Chapter II, Section 3.a (6)(b)(iii) (overburden)
Chapter II, Section 3.a. (6)(d)(ii) (vegetation types)
Chapter IV, Section 2.c. (2)(a) (topsoil)
Chapter IV, Section 3.p. (1)(a) (roads and powerlines)

(3) Wyoming's revised regulation Chapter IV, Section 2.d. (6) submitted March 26, 1981 to satisfy condition (e); and

(4) Wyoming's assurance that all applicants will sign a sworn statement at time of application filing that all reclamation fees have been paid submitted March 26, 1981 to satisfy condition (f).

(b) The following amendment was approved effective September 27, 1982:

Wyoming's revised regulation Chapter I, Section 2(99) submitted May 26, 1982 to satisfy condition (b).

(c) The following amendments are approved effective November 9, 1983:

(1) Wyoming's revision to W.S. 35-11-103(e) (xxii) and (xxiii) relating to modifying and adding definitions of "complete application", "deficiency" in permit applications, and "interim mine stabilization".

(2) Wyoming's revision to W.S. 35-11-406(h) which clarifies action to be taken by the administrator on deficient permit applications.

(3) Wyoming's revision to W.S. 35-11-401 adding new subsection (n) directing Administrator and Director to consider interim mine stabilization in promulgating regulations.

(4) Wyoming's revised regulations, Chapter I, Section 2; Chapter XIII, Section 2; Chapter XVI, Sections 1, 2, 3, 4, 5, and 6.

(d) The following amendment submitted to OSM on June 25, 1984, and clarified by the State on November 1, 1984, is approved effective February 28, 1985: Wyoming's regulations governing operator responsibility when requesting a variance from program standards and the State's responsibility in processing such a request at Sections 1 and 2 respectively, Chapter IV of the Wyoming Land Quality Division (LQD) Rules and Regulations; definitions relating to self-bonding at Section 1, Chapter XII of the LQD rules, procedures to be followed by an applicant when applying for self-bonding provisions at Section 2, Chapter XII of the LQD rules, procedures to be followed by an operator in the process of renewing an existing bond with a self-bond at Section 3, Chapter XII of the LQD rules; procedures to be followed by the State regulatory authority in approving or denying an operators request to self-bond at Section 4, Chapter XII of the LQD rules; procedures to be followed by the State regulatory authority when requiring an operator to replace a questionable self-bond with a substitute form of bond at Section 5, Chapter XII of the LQD rules; requirements addressing the release or forfeiture of self-bonds at Section 6, Chapter XII of the LQD rules; requirements for operators of existing operations to follow in substituting self-bonds for other forms of bond at Section 7, Chapter XII of the LQD rules; frequency and extent of mine inspections at Section 1, Chapter XVII of the LQD rules; procedures to be followed in handling enforcement actions at Section 2, Chapter XVII of the LQD rules, and procedures to be followed by the State regulatory authority in assessing civil penalties at Section 3 Chapter XVII of the LQD rules.

(e) The following amendment, as submitted to OSM on September 21, 1984 and revised on June 11, 1985, is approved, with the exception of the definition of "valid existing rights" at Chapter I, section 2(fffff) and the revision to Chapter XIII, section 1(a)(v)(C) concerning the protection of sites listed on the National Register of Historic Places, effective December 3, 1985: Modifications to certain definitions in Section 2 of Chapter I of the Rules and Regulations of the Land Quality Division (LQD) of the Wyoming Department of Environmental Quality, modifications to the permitting, bonding and insurance procedures and requirements of Chapter XIII of the LQD regulations, and the recodification of Chapters I and XIII of the LQD regulations.

The portion of Chapter XIII, section 1(a)(v)(C) not approved is italicized as follows:

(C) On any lands which will adversely affect any publicly owned park or *any publicly owned* places included in the National Register of Historic Places, unless jointly approved by the administrator and the Federal, State or local agency with jurisdiction over the park or place.

(f) The following amendment, as submitted to OSM on October 12, 1984 and revised on July 2, 1985, is approved effective December 13, 1985: Modifications to section 6 of Chapter VI of the Rules and Regulations of the Land Quality Division (LQD) of the Wyoming Department of Environmental Quality to establish a program for blaster training, examination and certification.

(g) The following amendment, as submitted to OSM on June 19, 1985, is approved effective January 2, 1986: Modifications to Chapter X and the accompanying Appendix A of the Rules and Regulations of the Water Quality Division of the Wyoming Department of Environmental Quality establishing performance and design standards for surface coal mining sedimentation control facilities.

(h) The following amendments to the Wyoming permanent regulatory program submitted to OSMRE on June 10, 1985, are approved effective to October 22, 1984 with the exceptions identified in 30 CFR 950.16:

(1) Modifications to Chapter II, section 3 concerning information requirements that must be included as part of the applicant's blasting plan;

(2) Modifications to Chapter III, section 2 which provides the Administrator of the Land Quality Division the authority to provide, if requested by the applicant, a preapplication determination as to the existence and extent of an alluvial valley floor;

(3) Modifications to Chapter V, section 1 which address new applicability requirements, section 6, with the exception of 6(e), concerning procedures to be used when sealing auger holes, and section 7, with the exception of 7(a)(ii) concerning highwall elimination in previously affected areas;

(4) Modifications to Chapter VI, section 2 concerning preblasting surveys, section 3 concerning public notification of an operators' blasting schedule, section 4 concerning blasting standards and section 5 concerning the operator's responsibility to record and retain records of each blast;

(5) Modifications to Chapter VII, section 1 concerning the submission of a subsidence control plan as part of the permit application, section 2 concerning performance standards applicable to underground coal mining operations, section 3 concerning public notification procedures for underground mining operations and section 4, with the exception, in part, of 4(a)(ii), concerning surface owner protection from underground coal mining operations;

(6) Modifications to Chapter XI, section 1, with the exception of 1(a) and

1(b)(iii), concerning general requirements for exploration operations of less than 250 tons, section 2 concerning general requirements for exploration operations of more than 250 tons, section 3, with the exception of 3(b), concerning decisions on applications to explore for more than 250 tons, section 4 concerning reclamation performance standards on coal exploration operations and Section 6, concerning public availability of information;

(7) Limited modifications to Chapter XVI, sections 1, 2, 3, 4 and 5 concerning procedures for bond release; and

(8) Modifications to Chapter XVIII, section 1, with the exception, in part, of the definition of "fragile lands" at 1(a) and sections 2, 3 (with the exception of 3(a)(iii) and 3(a)(viii)), 4 and 5 concerning procedures for processing petitions to designate lands as unsuitable for surface coal mining.

(Pub. L. 95-87, sec. 503 (30 U.S.C. 1253))

[48 FR 51467, Nov. 9, 1983, as amended at 50 FR 8110, Feb. 28, 1985; 50 FR 49550, Dec. 3, 1985; 50 FR 50903, Dec. 13, 1985; 51 FR 23, Jan. 2, 1986; 51 FR 10832, Mar. 31, 1986]

§ 950.16 Required program amendments.

Pursuant to 30 CFR 732.17 Wyoming is required to submit for OSMRE's approval the following proposed program amendments by the dates specified.

(a) By December 31, 1986, Wyoming shall submit for OSMRE's approval:

(1) Rules requiring an operator of an auger mining operation in a previously disturbed area to demonstrate to the regulatory authority that the backfill was designed by a registered professional engineer and that it has a minimum static safety factor of 1.3 for the stability of the backfill as required by 30 CFR 819.19(b)(i).

(2) Rules requiring all persons conducting surface coal mining operations in previously disturbed areas to use all reasonably available spoil in the vicinity of the remining operation to backfill the highwall to the maximum extent technically practical in a manner no less effective than the Federal regulations at 30 CFR 816.106(b) and 817.106(b) as interpreted by the court in *In re: Permanent Surface Mining Regulation Litigation II,* Civil Action No. 79-1144 (D.D.C.).

(b) By December 31, 1986, Wyoming shall submit for OSMRE's approval rules requiring the operator of an underground coal mining operation to either correct material damage to structures caused by subsidence or compensate the owner of such structures in the full amount of the diminution in value from the subsidence in a manner no less effective than 30 CFR 817.121(c).

(c) By December 31, 1986, Wyoming shall submit for OSMRE's approval rules providing for persons having an interest which is or may be adversely affected by a decision of the regulatory authority, an opportunity for administrative and judicial review in a manner no less effective than that as provided by the Federal regulations at 30 CFR 772.12(e)(2).

(d) By December 31, 1986, Wyoming shall submit for OSMRE's approval:

(1) Rules defining the phrase "fragile lands" in a manner no less effective than the revised Federal definition at 30 CFR 762.5 as agreed upon in the court settlement and as published in the January 3, 1985 FEDERAL REGISTER (50 FR 257); and

(2) Rules deleting the provision which allows for the suspension of lands unsuitable petitions in a manner no less effective than the Federal provisions at 30 CFR 764.15(a) (3) and (8) as modified by the courts remand.

[51 FR 10832, Mar. 31, 1986]

§ 950.20 State-Federal cooperative agreement.

COOPERATIVE AGREEMENT

The State of Wyoming (State) acting through the Governor and the Department of the Interior (Department) acting through the Secretary enter into a Cooperative Agreement (Agreement) to read as follows:

Article I: Introduction and Purpose

1. This Agreement is authorized by section 523(c) of the Surface Mining Control and Reclamation Act of 1977 (Act), 30 U.S.C. 1273(c) which provides for a State with a Permanent Regulatory Program (Program) approved under 30 U.S.C. 1253 to elect to enter into an Agreement for the regulation and control of surface coal mining on Federal lands.

This Agreement provides for State regulation consistent with the Act, the Federal lands program and the State program for surface coal mining and reclamation operations on Federal lands.

2. The purpose of this Agreement is to (a) foster Federal-State cooperation in the regulation of surface coal mining; (b) eliminate intergovernmental overlap and duplication; and (c) provide uniform and effective application of the Program in Wyoming, in accordance with the Act.

Article II: Effective Date

3. This agreement is effective following signing by the Secretary and the Governor, and upon final publication as rulemaking in the FEDERAL REGISTER. This Agreement shall remain in effect until terminated as provided in Article IX.

Article III: Scope

4. Under this agreement, the laws, regulations, terms and conditions of the Program conditionally approved effective November 26, 1980, 45 FR 78637-84, for the administration of the Act are applicable to Federal lands within the State except as otherwise stated in this Agreement, the Act, 30 CFR 745.13, or other applicable laws.

Article IV: Requirements for the Agreement

5. The Governor and the Secretary affirm that they will comply with all of the provisions of this Agreement and will continue to meet all the conditions and requirements specified in this Article.

(a) *Responsible Administrative Agency.* The State Regulatory Authority (SRA) shall be responsible for administering this Agreement on behalf of the Governor on Federal lands throughout the State. The Office of Surface Mining Reclamation and Enforcement (OSM) shall administer this Agreement on behalf of the Secretary, in accordance with the regulations in 30 CFR Chapter VII.

(b) *Authority of State Agency.* The SRA has and shall continue to have authority under State law to carry out this Agreement.

(c) *Funds.* The State will devote adequate funds to the administration and enforcement of Federal lands in the State of the requirements contained in the Program. If the State complies with the terms of this Agreement, and if necessary funds have been appropriated, the Department shall reimburse the State as provided in section 705(c) of the Act and 30 CFR 735.16 for costs associated with carrying out responsibilities under this Agreement.

(d) *Reports and Records.* The SRA shall make annual reports to the OSM Regional Director, Region V (Regional Director), containing information respecting its compliance with the terms of this Agreement pursuant to 30 CFR 745.12(c). The SRA and the Secretary shall exchange, upon request, information developed under this Agreement. The Secretary shall provide the SRA with a copy of any approved evaluation report prepared concerning State administration and enforcement of this Agreement.

(e) *Personnel.* The SRA shall have the necessary personnel to fully implement this Agreement in accordance with the provisions of the Act and the Program.

(f) *Equipment and Laboratories.* The SRA shall have access to equipment, laboratories, and facilities with which all inspections, investigations, studies, tests and analyses can be performed and which are necessary to carry out the requirements of this Agreement.

(g) *Permit Application Fees.* The amount of the fee accompanying an application for a permit shall be determined in accordance with W.S. 35-11-406(a)(xii). All permit fees shall be retained by the State and deposited with the State Treasurer in the General Fund. The Financial Status Report submitted pursuant to 30 CFR 725.23 shall include a report of the amount of permit application fees collected and attributable to Federal lands during the prior Federal fiscal year. This amount shall be disposed of in accordance with Federal regulations, OMB Circular No. A-102, Attachment E.

Article V: Policies and Procedures: Mining Plan and Permit Application Review

6. The Governor and the Secretary agree and hereby require that an operator on Federal lands shall submit an identical mining plan and permit application [or an application for a major modification to an approved mining plan and permit application] in an appropriate number of copies to the SRA and the Regional Director. The mining plan and permit application shall be in the form required by the SRA and include any supplemental forms required by the Secretary. The mining plan and permit application shall include the information required by, or necessary for, the SRA and the Secretary to make a determination of compliance with:

(a) W.S. 35-11-406(a) and (b) (1980);

(b) Chapter II, Land Quality Division Rules and Regulations, Department of Environmental Quality, or other chapters where these may supersede Chapter II;

(c) Applicable terms and conditions of the Federal coal lease; and

(d) Applicable requirements of the Program, and other Federal laws and regulations, including, but not limited to those listed in Appendix "A".

(e) A mining plan and permit applicant on Federal lands in the State shall satisfy the requirements of 30 CFR 741.12(b)(1) and 30

CFR 741.13(c) by submitting the information required by the SRA.

7. The SRA shall assume primary responsibility for the analysis and review of applications required by 30 CFR 741.13 for surface coal mining and reclamation permits on Federal lands in the State. The Secretary shall, as requested, assist the State through the Regional Director in this analysis and review. The Secretary shall, in addition, evaluate the State's analysis and conclusions as necessary to independently determine whether the Secretary concurs in the State's decision.

8. The SRA will be the primary point of contact for operators regarding the processing of mining plans and permit applications. The SRA will be responsible for informing the applicant of all joint State-Federal determinations. The SRA shall send copies of all correspondence with the applicant and any information received from the applicant which may have a bearing on decisions regarding the mining plan and permit application to the Regional Director. To the extent reasonable OSM will not independently initiate contacts with applicants regarding completeness of deficiences of mining plans and permit applications with respect to matters covered by the Program. The Secretary may act independently of the State to carry out his responsibilities under laws other than the Act or provisions of the Act not covered by the program, and in instances of disagreement over the Act and the Federal lands program. A copy of all independent correspondence with the applicant which may have a bearing on decisions regarding the mining plan and permit application shall be sent to the State.

9. The Regional Director is responsible to ensure that any information OSM receives concerning the application is sent to the SRA. The Regional Director and the SRA shall regularly coordinate with each other during the permit review process as needed.

10. The Regional Director shall be responsible for obtaining on a timely basis the views of all Federal agencies with jurisdiction or responsibility over a mine plan and permit application on Federal lands in the State, and for making these views known to the SRA. The SRA shall keep the Regional Director informed of findings during the review which bear on the responsibilities of other Federal agencies. The Regional Director shall take appropriate steps to facilitate discussions between the SRA and the concerned agencies wherever desirable to resolve issues or problems identified in the review.

11. Upon receipt of a mining plan and permit application, the Regional Director shall begin a review of completeness of the application with respect to other Federal laws and policies, and for identification of unique or special circumstances. The Regional Director shall identify a person as the OSM application manager. The OSM application manager shall serve as the primary point of contact between OSM and the SRA throughout the review process and shall be responsible for identifying areas of avoidable duplication of review and analysis, which shall be eliminated by the Regional Director. Not later than 50 days after an application has been received, OSM and the SRA shall meet to discuss whether the application is complete in form and content. When both agree that the application is complete, or no later than 30 days thereafter, they shall agree upon a work plan and schedule for the substantive review of the application. The Regional Director shall inform the SRA of any specific or general areas of concern which require special handling or analysis and whether he recommends OSM assistance. The SRA shall inform the Regional Director where OSM assistance will be needed to perform any specific or general analysis or prepare any studies or similar work.

12. Unless the work plan and schedule provides otherwise, the SRA shall prepare the technical/environmental analysis document, which shall include a proposed written final decision on the mining plan and permit application. To the fullest extent allowed by State and Federal law and regulations, the SRA and OSM will cooperate so that duplication will be eliminated in conducting the technical/environmental review and analyses and meeting NEPA requirements for a proposed mining plan and permit application. Copies of drafts of these documents shall be sent to the Regional Director for his review and comment. The Regional Director shall evaluate the documents and inform the SRA within 30 days whenever possible of any changes that should be made. The SRA shall consider the comments of the Regional Director and send a final technical/environmental analysis document and proposed final decision to the Regional Director for his written concurrence. The Regional Director shall have 30 days to act after receipt of the SRA's final technical/environmental analysis document and proposed final decision. If no further changes are required, the Regional Director shall proceed in accordance with 30 CFR 741.21 and inform the SRA of his action. Where an EIS is required, OSM shall develop the necessary planning documents, ensure that the necessary administrative requirements are met and complete the statement.

13. To the fullest extent practicable, the time schedules detailed in the Wyoming Environmental Quality Act shall apply.

14. Compliance with requirements and procedures of the program shall satisfy the requirements of 30 CFR 741.18, except that

the Department shall be available to attend all informal conferences and hearings. Nothing in this paragraph shall affect the Department's authority under 30 CFR 741.19.

15. In the event the SRA and the Regional Director cannot agree to the final actions to be taken by the SRA and the Department on the mining plan and permit application, the matter shall be referred to the Governor and the Secretary for resolution.

16. Nothing in this Agreement shall be construed to limit the Secretary's authority in 30 CFR 741.16, .17 and .21.

Article VI: Inspections

17. The SRA shall conduct inspections on Federal lands and prepare and file inspection reports in accordance with its Program. The SRA's inspection shall satisfy the Secretary's obligations under 30 CFR 842.11(c).

18. The SRA shall, subsequent to conducting any inspection, and on a timely basis, file with the Secretary an inspection report adequately describing (1) the general conditions of the lands under the permit and license; (2) the manner in which the operations are being conducted; and (3) whether the operator is complying with applicable performance and reclamation requirements.

19. The SRA will be the point of contact and sole inspection authority in dealing with the operator concerning operations and compliance with the requirements covered by this Agreement, except as described hereinafter. Nothing in this Agreement shall prevent Federal inspections by authorized Federal or State agencies for purposes other than those covered by this Agreement. The Department may conduct any inspections necessary to comply with 30 CFR Parts 842 and 743, as Part 743 relates to obligations under law other than the Act.

20. The Regional Director shall give the SRA reasonable notice of his intent to conduct an inspection in order to provide State inspectors with an opportunity to join in the inspection. When the Department is responding to a citizen complaint of an imminent environmental danger or a threat to human health pursuant to 30 CFR 842.11(b)(1)(ii)(C), it will contact the SRA no less than 24 hours if practicable, prior to the Federal inspection to facilitate a joint Federal/State inspection. The Secretary reserves the right to conduct inspections without prior notice to the SRA if necessary to carry out his responsibilities under the Act.

21. Personnel of the State and representatives of the Department shall be mutually available to serve as witnesses in enforcement actions taken by either party.

Article VII: Enforcement

22. The SRA shall be the primary enforcement authority concerning compliance with the requirements of this Agreement and its Program.

23. During any joint inspection by the Department and the SRA, the SRA shall have primary responsibility for enforcement procedures, including issuance of orders of cessation, notices of violation, and assessment of penalties. The Department and the SRA shall consult prior to issuance of any decision to suspend or revoke a permit.

24. During either any inspection made solely by the Department or any joint inspection where the SRA and the Department fail to agree regarding the propriety or any particular enforcement action, the Department may take any enforcement action necessary to comply with 30 CFR Parts 843 and 845.

25. The SRA and the Department shall promptly notify each other of all violations of applicable laws, regulations, orders, or approved mining plans and permits subject to this Agreement, and of all actions taken with respect to such violations.

26. This Agreement does not limit the Department's authority to enforce violations of Federal law which establish standards and requirements which are authorized by laws other than the Act.

Article VIII: Bonds

27. The SRA and the Secretary shall require all operators on Federal lands to submit a single bond payable to both the United States and the State to cover the operator's responsibilities under the Act and the Program. Such bond shall be conditional upon compliance with all requirements of the Program, the Act and the permit.

28. Prior to releasing the operator from an obligation under a bond required by the Program, the SRA shall obtain the consent of the Department. Departmental consent shall be based on field measurements, observations, and correlation with other Federal agencies having authority over the affected lands. The SRA shall also advise the Department of annual adjustments to the bond pursuant to the program.

29. The operator's performance bond shall be subject to forfeiture, with the consent of the Department, in accordance with the procedures and requirements of the Program.

Article IX: Termination of Cooperative Agreement

30. This Agreement may be terminated by the State or the Secretary under the provisions of 30 CFR 745.15.

Article X: Reinstatement of Cooperative Agreement

31. If this Agreement has been terminated in whole or in part it may be reinstated under the provisions of 30 CFR 745.16.

Article XI: Amendments of Cooperative Agreement

32. This Agreement may be amended by mutual agreement of the Governor and the Secretary in accordance with 30 CFR 745.14.

Article XII: Changes in State or Federal Standards

33. The Department or the State may from time to time revise and promulgate new or revised performance or reclamation requirements or enforcement and administration procedures. Each party shall, if it determines it to be necessary to keep this Agreement in force, change or revise its respective laws or regulations. For changes which may be accomplished by rulemaking, each party shall have six months in which to make changes. For changes which require legislative authorization, the State shall have until the close of its next regular legislative session in which to make the changes.

34. The SRA and the Department shall provide each other with copies of any changes to their respective laws, rules, regulations, and standards pertaining to the enforcement and administration of this Agreement.

Article XIII: Changes in Personnel and Organization

35. The SRA and the Department shall, consistent with 30 CFR Part 745, advise each other of changes in organization, structure, functions, duties and funds of the officer, departments, divisions, and persons within their organizations. Each shall promptly advise the other in writing of changes in key personnel, including the heads of a department or division, or changes in the functions or duties of persons occupying the principal offices within the structure of the Program. The SRA and the Department shall advise each other in writing of changes in the location of offices, addresses, telephone numbers, and changes in the names, locations and telephones numbers of their respective mine inspectors and the area within the State for which such inspectors are responsible.

Article XIV: Reservation of Rights

36. In accordance with 30 CFR 745.13, this Agreement shall not be construed as waiving or preventing the assertion of any rights that have not been expressly addressed in this Agreement, that the State or the Secretary may have under other laws or regulations, including the Mineral Leasing Act, as amended, the Mineral Leasing Act for Acquired Lands, the Stockraising Homestead Act, the Surface Mining Control and Reclamation Act of 1977, the Federal Land Policy and Management Act, the Constitution of the United States, the Constitution of the State or State laws.

Article XV: Definitions

37. Terms and phrases used in this Agreement which are defined in 30 CFR Parts 700 and 701 shall be given the meanings set forth in said definitions.

Dated: January 7, 1981.

Ed Herschler,
Governor of Wyoming.
Cecil D. Andrus,
Secretary of the Interior.

APPENDIX A

(1) The Federal Land Policy and Management Act, 43 U.S.C. 1701 *et seq.*, and implementing regulations.

(2) The Mineral Leasing Act of 1920, 30 U.S.C. 181 *et seq.*, and implementing regulations including 30 CFR 211 *et seq.*

(3) The National Environmental Policy Act of 1969, 42 U.S.C. 4312 *et seq.*, and implementing regulations including 40 CFR 1500 *et seq.*

(4) The Endangered Species Act, 16 U.S.C. 1531 *et seq.*, and implementing regulations including 50 CFR 402.

(5) The National Historic Preservation Act of 1966, 16 U.S.C. 470 *et seq.*, and implementing regulations, including 36 CFR 800, and Executive Order 11593 (May 13, 1971).

(6) The Clean Air Act, 42 U.S.C. 7401 *et seq.*, and implementing regulations.

(7) The Federal Water Pollution Control Act, 33 U.S.C. 1251 *et seq.*, and implementing regulations.

(8) The Resource Conservation and Recovery Act of 1976, 42 U.S.C. 6901 *et seq.*, and implementing regulations.

(9) The Reservoir Salvage Act of 1960, amended by the Preservation and Historical and Archaeological Data Act of 1974, 16 U.S.C. 469 *et seq.*

(10) Executive Order 11988 (May 24, 1977) for floodplain protection. Executive Order 11990 (May 24, 1977) for wetlands protection.

(Pub. L. 95-87, sec. 523(c); (30 U.S.C. 1273(c)))

[46 FR 9080, Jan. 28, 1981]

§ 950.30 Approval of Wyoming abandoned mine land reclamation plan.

The Wyoming Reclamation Plan, as submitted on August 16, 1982, is approved. Copies of the approved program are available at:

State of Wyoming, Land Quality Division, 401 West 19th Street, Cheyenne, Wyoming 80202

Office of Surface Mining Reclamation and Enforcement, Casper field Office, P.O. Box 1420, 935 Pendell Blvd., Mills, Wyoming 82644

Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 5315, 1100 "L" Street, NW., Washington, D.C. 20240

(Sec. 503, Pub. L. 95-87 (30 U.S.C. 1253))

[48 FR 6538, Feb. 14, 1983]

PART 955—CERTIFICATION OF BLASTERS IN FEDERAL PROGRAM STATES AND ON INDIAN LANDS

Sec.

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Authority: Pub. L. 95-87 (30 U.S.C. 1201 *et seq.*), sec. 955.13 also issued under sec. 9701, Pub. L. 97-258 (31 U.S.C. 9701).

Source: 51 FR 19462, May 29, 1986, unless otherwise noted.

§ 955.1 Scope.

This part establishes rules pursuant to Part 850 of this chapter for the training, examination and certification of blasters by OSM for surface coal mining operations in States with Federal programs and on Indian lands. It governs the issuance, renewal, reissuance, suspension and revocation of an OSM blaster certificate, replacement of a lost or destroyed certificate, and reciprocity to a holder of a certificate issued by a State regulatory authority.

§ 955.2 Implementation.

In accordance with §§ 750.19, 816.61(c) and 817.61(c) of this chapter, after June 30, 1987, in Federal program States and on Indian lands any person who is responsible for conducting blasting operations at a blasting site shall have a current OSM blaster certificate.

§ 955.5 Definitions.

As used in this part:

Applicant means a person who submits an application for an OSM blaster certificate.

Application means a request for an OSM blaster certificate submitted on the prescribed form, including the required fee and any applicable supporting evidence or other attachments.

Issue and *issuance* mean to grant to an applicant his or her first OSM blaster certificate that is not granted through reciprocity.

Reciprocity means the recognition by OSM of a blaster certificate issued by a State regulatory authority under an OSM-approved blaster certification program as qualifying an applicant for the grant of an OSM blaster certificate.

Reissue and *reissuance* are synonymous with the term *recertification* in § 850.15(c) of this chapter, and mean to grant to an applicant who holds a renewed OSM blaster certificate, or who holds an OSM blaster certificate that expired more than 1 year prior to the date of his or her application, or who held an OSM blaster certificate that was revoked, a subsequent certificate that is not granted through reciprocity and for which additional training and examination are required.

Renew and *renewal* mean to grant to an applicant who holds an issued or reissued OSM blaster certificate a subsequent certificate that is not granted through reciprocity and for which additional training and examination are not required.

Replace and *replacement* mean to grant to an applicant a duplicate OSM blaster certificate as a substitute for one that was lost or destroyed.

§ 955.10 Information collection.

The information collection requirements in this part were approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned clearance number 1029-0083. This information is needed to meet the requirements of sections 504, 515, 516, 710 and 719 of Pub. L. 95-87, and will be used by OSM in the certification of blasters. The obligation to respond is mandatory.

§ 955.11 General requirements.

To qualify for an OSM blaster certificate, a person shall:

(a) Be at least 20 years old prior to submitting an application, and at least 21 years old prior to the grant of a certificate;

(b) In the 3 years prior to submitting an application have been qualified and worked as a blaster or the equivalent, or have worked under the direction of a blaster or the equivalent, for the following cumulative length of time:

(1) Certificate issuance—2 years; or

(2) Certificate renewal or reissuance—1 year;

(c) For certificate issuance or reissuance, have received on-the-job training, completed a training course, and obtained satisfactory evidence of having completed training, as provided in § 955.12;

(d) Be competent, possess practical knowledge of blasting techniques, understand the hazards involved in the use of explosives, and exhibit a pattern of conduct consistent with the acceptance of responsibility for blasting operations;

(e) Submit an application as provided in § 955.13;

(f) For certificate issuance or reissuance, pass a written examination as provided in § 955.14;

(g) For a certificate through reciprocity, meet the requirements of § 955.16; and

(h) Not be subject to suspension, revocation or other action under § 955.17.

§ 955.12 Training.

(a) *On-the-job training.* Except as provided in § 955.14(c) for reexamination, each applicant for the issuance of an OSM blaster certificate who does not qualify as a blaster or the equivalent shall:

(1) Have received on-the-job training, including practical field experience in blasting operations, from a blaster or the equivalent for 2 out of the 3 years preceding the submission of his or her application; and

(2) Have obtained from the blaster or the equivalent, the relevant employer, or other knowledgable source, satisfactory evidence of having received on-the-job training in accordance with paragraph(a)(1) of this section.

(b) *Training course.* Except as provided in § 955.14(c) for reexamination, each applicant for the issuance or reissuance of an OSM blaster certificate shall:

(1) Within 2 years prior to submitting an application, have completed a training course as follows:

(i) For certificate issuance the course shall cover the technical aspects of blasting operations and State and Federal laws governing the storage, transportation and use of explosives, including the topics specified in § 850.13(b) of this chapter; or

(ii) For certificate reissuance the course shall cover any significant changes that have occurred in the topics specified in § 850.13(b) of this chapter since the applicant last completed a course that was accepted by OSM for the issuance or reissuance of an OSM blaster certificate. If OSM determines that no siginficant changes have occurred, OSM may waive this requirement; and

(2) Have obtained from the training provider satisfactory evidence that he or she has completed training in accordance with paragraph(b)(1) of this section.

(c) *Availability.* OSM shall ensure that courses are available as provided in § 850.13(b) of this chapter to train persons subject to this part who are responsible for the use of explosives in surface coal mining operations.

§ 955.13 Application.

(a) *Submission procedures.* Any person seeking an OSM blaster certificate shall:

(1) Complete and submit to OSM an application on the form prescribed by paragraph (b) of this section;

(2) Include as part of the application a nonrefundable fee as follows:

(i) Issuance or reissuance	$122
(ii) Reexamination	$61
(iii) Renewal	$61
(iv) Replacement	$28
(v) Reciprocity	$61;

(3) For certificate issuance or reissuance, include as part of the application satisfactory evidence of having

completed training as provided in § 955.12;

(4) For certificate issuance or reissuance, specify in the application the date when the applicant desires to take a previously scheduled examination; and

(5) Submit the application in advance of the date of examination, or of certificate expiration, as follows:

(i) For certificate issuance, not less than 60 days before the date on which the applicant desires to take a previously scheduled examination;

(ii) For certificate renewal, not less than 60 days before the expiration date of the applicant's current certificate;

(iii) For certificate reissuance, not less than 60 days before the date on which the applicant desires to take a previously scheduled examination that will be held at least 60 days before the expiration date of the applicant's current certificate; or

(iv) For a certificate through reciprocity, not less than 45 days before the expiration date of the applicant's current certificate.

(b) *Application form.* OSM shall make available to any person seeking an OSM blaster certificate an application form and instructions for its completion. The form shall include a statement in accordance with law that the information provided is true and accurate to the best knowledge and belief of the applicant, and shall require the signature of the applicant.

§ 955.14 Examination.

(a) *Certificate issuance or reissuance.* After submitting an application, each applicant for the issuance or reissuance of an OSM blaster certificate shall pass a written examination, as provided in paragraph (b) of this section.

(b) *Administration and content.* (1) On a regular basis OSM shall schedule and hold a written examination on the technical aspects of blasting operations and State and Federal laws governing the storage, transportation and use of explosives, as provided in § 850.14 of this chapter.

(2) The examination at a minimum shall cover the topics specified in §850.13(b) of this chapter, and shall include:

(i) Objective questions;

(ii) Blasting log problems; and

(iii) Initiation system and delay sequence problems.

(c) *Reexamination.* (1) Any person who fails the examination may apply to OSM for reexamination by submitting a new application, including the prescribed fee, but no person may take the examination more than 2 times in any 12-month period.

(2) Any person who fails the examination and submits a new application within 2 years of completing training as provided in § 955.12(a) need not repeat, or resubmit evidence of having completed, training.

(d) *Failure to attend.* Except where the applicant shows and OSM finds good cause, OSM may reject the pending application of any applicant who fails to take the examination after OSM has granted his or her request for admission.

§ 955.15 Certification.

(a) *Processing of application.* (1) Upon receiving an application for an OSM blaster certificate OSM shall:

(i) Notify the applicant of the receipt of, and of any deficiency in, the application.

(ii) Where applicable, notify the applicant that his or her request for admission to a scheduled examination either is granted or denied.

(2) When OSM determines that an applicant has failed to qualify for an OSM blaster certificate, OSM shall reject his or her application and notify him or her accordingly.

(b) *Grant of certificate.* OSM shall:

(1) Issue or reissue an OSM blaster certificate to any qualified applicant who completes the applicable training, passes the examination, and is found by OSM to be competent and to have the necessary knowledge and experience to accept responsibility for blasting operations;

(2) Renew one time the issued or reissued OSM blaster certificate of any qualified applicant;

(3) Replace the OSM blaster certificate of any qualified applicant who presents satisfactory evidence that his

or her certificate was lost or destroyed;

(4) Grant an OSM blaster certificate through reciprocity as provided in § 955.16; or

(5) Reinstate a suspended, or reissue a revoked OSM blaster certificate as provided in § 955.17(e).

(c) *Term of certificate.* OSM shall grant an OSM blaster certificate for a term to expire as follows:

(1) Issuance—3 years after issue date;

(2) Renewal—3 years after expiration date of applicant's current or expired certificate;

(3) Reissuance—3 years after expiration date of applicant's current or expired certificate;

(4) Replacement—same expiration date as replaced certificate; or

(5) Reciprocity—60 days after expiration date of corresponding State certificate.

(d) *Limits on renewal.* (1) OSM shall not renew an OSM blaster certificate more than 1 time. A blaster who seeks to extend a renewed certificate may apply to OSM for certificate reissuance.

(2) OSM shall not renew an OSM blaster certificate that expired more than 1 year prior to the date of an application for renewal. An applicant who desires to extend a certificate that expired more than 1 year prior to the date of his or her application may apply to OSM for certificate reissuance.

(e) *Temporary certificate.* Upon request of an applicant who demonstrates that his or her current OSM blaster certificate is about to expire, or expired within 30 days prior to the date of his or her application, for reasons beyond his or her control, OSM may issue a non-renewable temporary OSM blaster certificate for a maximum term of 90 days.

(f) *Conditions of certification.* Any person who holds an OSM blaster certificate shall comply with the conditions specified in §§ 850.15 (d) and (e) of this chapter.

(g) *Change of address.* Any person who holds an OSM blaster certificate shall notify OSM in writing within 30 days of any change in his or her address.

§ 955.16 Reciprocity.

(a) *Grant of certificate.* OSM shall grant an OSM blaster certificate through reciprocity to any qualified applicant who demonstrates that he or she, and whom OSM finds, holds a current State blaster certificate granted by a State regulatory authority under an OSM-approved State blaster certification program. An applicant for a certificate through reciprocity need not otherwise demonstrate that he or she meets the age, experience, knowledge, competence, training or examination requirements of this part.

(b) *Subsequent certificate.* (1) Any person who holds an OSM blaster certificate granted through reciprocity may qualify for a subsequent certificate either through reciprocity or by meeting directly the applicable requirements of this part for certificate issuance, renewal or reissuance.

(2) OSM shall not recognize a certificate granted through reciprocity as qualifying an applicant for certificate issuance, renewal or reissuance.

§ 955.17 Suspension and revocation.

(a) *Cause, nature and duration.* (1) OSM may, and upon a finding of willful conduct of the blaster OSM shall, suspend for a definite or indefinite period, revoke or take other necessary action on the certificate of an OSM-certified blaster for any of the reasons specified in § 850.15(b) of this chapter.

(2) Where OSM has reliable information which demonstrates that the storage, transportation or use of explosives by an OSM-certified blaster is likely to threaten public safety or the environment, OSM shall suspend his or her certificate as soon as is practicable.

(3) OSM shall make the nature and duration of a suspension, revocation or other action under this section commensurate with the cause of the action and what the person whose certificate is subjected to the action does to correct it.

(b) *Notice and hearing.* When practicable, OSM shall give a certificate holder written notice and an opportunity for an informal hearing prior to suspending, revoking or taking other action on his or her OSM blaster certificate. OSM shall limit any action taken without such notice and opportunity to a temporary suspension for a maximum term of 90 days pending a decision on a final suspension, revocation or other action after such notice and opportunity have been provided.

(c) *Decision and appeal.* By certified mail within 30 days after giving written notice and an opportunity for an informal hearing, OSM shall notify the certificate holder in writing of its final decision on his or her OSM blaster certificate, including the reasons for any suspension, revocation or other action. If the certificate was granted through reciprocity, OSM shall notify the State regulatory authority of its action. In any decision suspending, revoking or taking other action on an OSM blaster certificate, OSM shall grant to the certificate holder the right of appeal to the Department of the Interior Board of Land Appeals under 43 CFR 4.1280 to 4.1286.

(d) *Surrender of certificate.* Upon receiving written notice that his or her OSM blaster certificate was suspended, revoked or subjected to other action, a certificate holder immediately shall surrender the certificate to OSM in the manner specified in the notice.

(e) *Reinstatement and reissuance.* (1) OSM shall reinstate a suspended OSM blaster certificate by returning the certificate to the former certificate holder with notice of reinstatement when:

(i) The term of a definite suspension expires; or

(ii) The former certificate holder demonstrates, and OSM finds, that the cause of an indefinite suspension has been corrected.

(2) OSM shall reissue an OSM blaster certificate to an applicant whose certificate was revoked if his or her application demonstrates, and OSM finds, that:

(i) The cause of the revocation has been corrected; and

(ii) The applicant meets all other applicable requirements of this part.

(f) *Conformance with State action.* OSM shall suspend, revoke or take other commensurate action on an OSM blaster certificate granted through reciprocity if the State regulatory authority suspends, revokes or takes other action on the corresponding State certificate.

[51 FR 19462, May 29, 1986; 51 FR 22282, June 19, 1986]

FINDING AIDS

A list of CFR titles, subtitles, chapters, subchapters and parts and an alphabetical list of agencies publishing in the CFR are included in the CFR Index and Finding Aids volume to the Code of Federal Regulations which is published separately and revised annually.

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Material Approved for Incorporation by Reference

The Director of the Federal Register has approved under 5 U.S.C. 552(a) and 1 CFR Part 51 the incorporation by reference of the following publications. For more information on incorporation by reference, see the preliminary pages of this volume.

30 CFR CHAPTER VII (PARTS 700 TO 999)
OFFICE OF SURFACE MINING, DEPARTMENT OF THE INTERIOR

	30 CFR
American Association of State Highway and Transportation Officials	
444 N. Capitol St., N.W., Suite 225, Washington, DC 20001	
AASHTO T-99, Transportation Materials and Methods of Sampling and Testing, Part II 1978.	816.85; 817.85; 910.816-85; 910.817-85
American National Standards Institute	
1430 Broadway, New York, NY 10018	
ANSI S1.4-71 Sound Level Meters	816.65; 817.65; 910.816-65; 910.817-65
American Public Health Association	
1015 18th St., N.W., Washington, DC 20036	
APHA Methods for the Examination of Water and Waste Water, 14th Ed., 1975.	795.17; 910.795-17
American Society for Testing and Materials	
1916 Race St., Philadelphia, PA 19103	
D 388-77 Classification of Coals by Rank—1977	700.5; 910.701-5; 921.701-5; 922.701-5; 937.701-5; 939.701-5
American Society of Civil Engineers	
345 E. 47th St., New York, NY 10017	
The Journal of the Irrigation and Drainage Division, American Society of Civil Engineers, "Crop Salt Tolerance-Current Assessment" by Maas and Hoffman—1977.	785.19
Environmental Protection Agency, Office of Technology Transfer	
Office of Technology Transfer, Industrial Environmental Research Laboratory, Environmental Protection Agency, Cincinnati, OH 45268	
EPA Methods for Chemical Analysis of Water and Wastes, 1979	795.17; 910.795-17
Soil Conservation Service, Department of Agriculture	
The following publications are available through the Superintendent of Documents, Government Printing Office, Washington, DC 20402	
Agricultural Handbook No. 18, "Soil Survey Manual"—1951 and amendments of Dec. 18, 1979, May 7, 1980, May 9, 1980, Sept. 11, 1980, June 9, 1981, June 29, 1981, Nov. 16, 1982.	785.17
Agricultural Handbook No. 436, "Soil Taxonomy"—1975 and amendments of Mar. 22, 1982, and Oct. 5, 1982.	785.17

30 CFR CHAPTER VII (PARTS 700 TO 999)—Continued

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	30 CFR
The following publications are available through the Deputy Administrator—Technical Services, Soil Conservation Service, Department of Agriculture, Washington, DC 20013	
Soil Conservation Service Practice Standard 378, "Ponds"—1977–1978	816.49, 817.49; 910.816–49; 910.817–49
Technical Release No. 60, "Earth Dams and Reservoirs"—1976	816.49, 817.49; 910.816–49; 910.817–49

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National Telecommunications and Information Administration	15, XXIII
National Transportation Safety Board	49, VIII
Navajo and Hopi Indian Relocation Commission	25, IV
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Nuclear Regulatory Commission	10, I
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Agency	CFR Title, Subtitle or Chapter
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Personnel Management, Office of	5, I; 45, VIII
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Postsecondary Education, Office of	34, VI
President's Commission on White House Fellowships	1, IV
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Prisons, Bureau of	28, V
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Public Contracts, Department of Labor	41, 50
Public Health Service	42, I
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Reclamation Bureau	43, I
Refugee Resettlement, Office of	45, IV
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Rural Electrification Administration	7, XVII
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Saint Elizabeths Hospital	42, III
Saint Lawrence Seaway Development Corporation	33, IV
Science and Technology Policy, Office of	32, XXIV
Science and Technology Policy, Office of, and National Security Council	47, II
Secret Service	31, IV
Securities and Exchange Commission	17, II
Selective Service System	32, XVI
Small Business Administration	13, I; 48, 22
Smithsonian Institution	36, V
Social Security Administration	20, III; 45, IV
Soil Conservation Service	7, VI
Solar Energy and Energy Conservation Bank, Department of HUD	24, XI
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Special Education and Rehabilitative Services, Office of	34, III
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Federal Acquisition Regulation	48, 12
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Federal Highway Administration	23, I, II; 49, III
Federal Railroad Administration	49, II
Maritime Administration	46, II
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Research and Special Programs Administration	49, I
Saint Lawrence Seaway Development Corporation	33, IV
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Urban Mass Transportation Administration	49, VI
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Alcohol, Tobacco and Firearms, Bureau of	27, I
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Customs Service, United States	19, I
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Federal Acquisition Regulation	48, 10
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Agency	CFR Title, Subtitle or Chapter
Internal Revenue Service	26, I
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United States Customs Service	19, I
Truman, Harry S, Scholarship Foundation	45, XVIII
United States and Canada, International Joint Commission	22, IV
United States Arms Control and Disarmament Agency	22, VI
United States Customs Service	19, I
United States Fish and Wildlife Service	50, I, IV
United States Information Agency	22, V; 48, 19
United States International Development Cooperation Agency	22, XII
United States International Trade Commission	19, II
United States Postal Service	39, I
United States Railway Association	49, IX
United States Soldiers' and Airmen's Home	5, XI
United States Trade Representative, Office of	15, XX
United States Travel Service	15, XII
Urban Mass Transportation Administration	49, VI
Veterans Administration	38, I; 48, 8
Vice President of the United States, Office of	32, XXVIII
Vocational and Adult Education, Office of	34, IV
Wage and Hour Division	29, V
Water Resources Council	18, VI
Workers' Compensation Programs, Office of	20, I

Derivation Table

To assist the reader in understanding all the changes in the final rules published at 48 FR 44344, Sept. 28, 1983, the following derivation table shows the relationship of the final permitting rules to the previous rules and the proposed rules of June 25, 1982 (47 FR 27688).

DERIVATION TABLE—PERMITTING

Part 701

Final definitions	Previous rule	Proposed rule
§ 701.5:		
Administratively complete application	§ 770.5	§ 701.5
Applicant	§ 770.5	§ 701.5
Application	§§ 770.5 and 701.5	§ 701.5
Complete and accurate application	§ 770.5	§ 701.5
Irreparable damage to the environment	§ 786.5	§ 701.5
Principal shareholder	§ 770.5	§ 701.5
Property to be mined	§ 770.5	§ 701.5
Successor in interest	§ 788.5	§ 701.5
Transfer, assignment or sale of permit rights	§ 788.5	§ 701.5
Violation notice	§ 770.5	§ 701.5
Willful violation	§ 786.5	§ 701.5
§ 701.11:		
Section 701.11(d) is revised to be consistent with changes made in these final permitting rules.		

Final Part 773

Final rule	Previous rule	Proposed rule
§ 773.1	§§ 770.1, 771.1, 786.1 and 788.1	§ 773.1
§ 773.10		§ 773.10
§ 773.11		§ 773.11
(a)	§ 771.11	(a)
(b)(1)	§ 771.13(a)	(b)(1)
(b)(2)	§ 771.13(b)	(b)(2)
(b)(2)(i)	§ 771.21(a)(1)	(b)(2)(i)
(b)(2)(ii)	§ 771.13(b)(2)	(b)(2)(iii)
(b)(2)(iii)	§ 771.13(b)(3)	(b)(2)(iv)
(b)(3)		(b)(3)
(c)(1)	§ 771.15 intro	(c)(1)
(c)(2)	§ 771.15(a)	(c)(2)
(c)(3)	§ 771.15 (b) and (c)	(c)(3)
(c)(3)(i)	§ 771.15(c)(2)	(c)(3)(i)
(c)(3)(ii)	§ 771.15(c)(2)	(c)(3)(ii)
(c)(3)(iii)		(c)(3)(iii)
(c)(3)(iv)		(c)(3)(iv)
(d)(1)	§ 771.17 intro	(d)(1)
(d)(2)	§ 771.17 intro	(d)(2)
(d)(2)(i)	§ 771.17(a)	(d)(2)(i)
(d)(2)(ii)	§ 771.17(b)	(d)(2)(ii)
(d)(2)(iii)	§ 771.17(c)	(d)(2)(iii)
(d)(2)(iv)	§ 771.17(d)	(d)(2)(iv)
§ 773.12	§ 770.12 intro and (c)	
§ 773.13:		§ 773.13
(a)(1)	§ 786.11(a)	(a)(1)
(a)(1)(i)	§ 786.11(a)(1)	(a)(1)(i)

Final Part 773

Final rule	Previous rule	Proposed rule
(a)(1)(ii)	§ 786.11(a)(2)(i, ii and iv)	(a)(1)(ii)
(a)(1)(iii)	§ 786.11(a)(3)	(a)(1)(iii)
(a)(1)(iv)	§ 786.11(a)(4)	(a)(1)(iv)
(a)(1)(v)	§ 786.11(a)(5)	(a)(1)(v)
(a)(1)(vi)	§ 786.13(g)	(a)(1)(iv)
(a)(2)	§ 786.11(d)(1-2)	(a)(2)
(a)(3)	§ 786.11(b)(1-4)	(a)(3)
(a)(3)(i)	§ 786.11(c)(1-3)	(a)(3)(i)
(a)(3)(ii)	§ 786.11(c)(4)	(a)(3)(ii)
(b)(1)	§ 786.12(a) and (b)	(b)(1)
(b)(2)	§ 786.13(a)	(b)(2)
(b)(3)(i-ii)	§§ 786.12(c) and 786.13(b)(1-2)	(b)(3)(i-ii)
(c)(i)(i-iii)	§ 786.14(a)(1-3)	(c)(1)(i-iii)
(c)(2)(i-iv)	§ 786.14(b)(1-4)	(c)(2)(i-iv)
(c)(3)	§ 786.14(c)	(c)(3)
(c)(4)	§ 786.14(d)	(c)(4)
(d)(1)	§ 786.15(a)	(d)(1)
(d)(2)	§ 786.15(a)(1)	(d)(2)
(d)(3)(i-ii)	§ 786.15 (a)(2-3) and (b)	(d)(3)(i-iii)
(d)(3)(iii)		
§ 773.15:		§ 775.15:
(a)(1)	§§ 786.17(a)(1) and 786.23(b)(1)(ii)	(a)(1)
(a)(2)		(a)(2)
(b)(1)	§ 786.17(c)	(b)(1)
(b)(1)(i)	§ 786.17(c)(1)	(b)(1)(i)
(b)(1)(ii)	§ 786.17(c)(2)	(b)(1)(ii)
(b)(2)		§ 773.21(a)(1)(ii)
(b)(3)	§ 786.17(d)	(b)(2)
(c)	§ 786.19 intro	(c)
(c)(1)	§ 786.19(a)	(c)(1)
(c)(2)	§ 786.19(b)	(c)(2)
(c)(3)(i)	§ 786.19(d)(1-2)	(c)(3)(i)
(c)(3)(ii)	§ 786.19(d)(3)	(c)(3)(ii)
(c)(4)	§ 786.19(f)	(c)(4)
(c)(5)	§ 786.19(c)	(c)(5)
(c)(6)	§ 786.21 (a)(1) and (a)(1)(i)	
(c)(7)	§ 786.19(h)	(c)(7)
(c)(8)	§ 786.19(l)	(c) (6) and (8)
(c)(9)	§ 786.19(m)	(c)(9)
(c)(10)	§ 786.19(o)	
(c)(11)	§§ 786.19(d)(3) and 761.11(g)	
(d)	§ 786.17(b)	(d)
§ 773.17:		§ 773.17:
Intro		Intro
(a)	§ 786.27(c)	(a)
(b)	§§ 786.27(a) and 771.19	(b)
(c)	§ 771.19	(c)
(d)	§ 786.27(b)	(d)
(d)(1)	§ 786.27(b)(1)	(d)(i)
(d)(2)	§ 786.27(b)(2)	(d)(ii)
(e)(1-3)	§ 786.29(a)(1-3)	(e)(1-3)
(f)		
(g)	§ 786.21(a)(1-2)	
§ 773.19:		
(a)	§ 786.17(b)	§ 773.15(a)(3) and (d)
(b)(1)	§ 786.23.(c)	§ 773.15(a)(4)
(b)(2)	§ 786.23(f)	§ 773.15(a)(4)
(b)(3)	§ 786.23(e)(1)(ii)	§ 773.15(a)(5)
(c)	§ 786.25(a)(1-2)	§ 773.19(b)
(d)	§§ 788.13(a) and 786.19 intro and (a)	§ 773.19(a)
(e)(1)	§ 786.25(b)(1)	§ 773.19(c)(1)
(e)(2)(i)	§ 786.25(b)(2)(i)	§ 773.19(c)(2)(i)
(e)(2)(ii)	§ 786.25(b)(2)(ii)	§ 773.19(c)(2)(ii)
(e)(3)	§ 786.25(b)(3)	§ 773.19(c)(3)
(e)(4)	§ 786.25(b)(4)	§ 773.19(c)(4)

Final Part 774

§ 774.1	§§ 788.1-788.3	§ 773.1

Derivation Table

Final Part 773

Final rule	Previous rule	Proposed rule
§ 774.10		§ 773.10
§ 774.11		
(a)	§ 788.11(a)(1)	§ 773.23(a)
(a)(1)	§ 788.11(a)(2)	§ 773.23(a)(1)
(a)(2)	§ 788.11(a)(1)	§ 773.23(a)(2)
(a)(3)	§§ 788.11(a)(1) and 785.16(e)	§ 773.23(a)(3)
(b)	§ § 788.11(b) and 788.12(a)(2)	§ 773.23(b)
(c)	§ 788.11 (c) and (d)	§ 773.23(c)
(d)	§ 786.25(c)	§ 773.23(d)
§ 774.13		
(a)		§ 773.25(a)
(b)(1)	§§ 788.12 (c), (b)(1) and 771.21(b)(3)	§ 773.25(b)(i)
(b)(2)	§ 788.12(b)(2)	§ 773.25(b)(ii)
(c)	§ 788.12(c)	§ 773.25(c)
(d)	§ 788.12(d)	§ 773.25(d)
§774.15:		
(a)	§ 788.13 (a) and (b)	§ 773.27(a)
(b)(1)	§ 771.21(b)(2)	§ 773.27(b)(1)
(b)(2)	§ 788.14(a)	§ 773.27(b)(2)
(b)(2)(i)	§ 788.14(a)(1)	§ 773.27(b)(2)(i)
(b)(2)(ii)	§ 788.14(a)(3)	§ 773.27(b)(2)(ii)
(b)(2)(iii)	§§ 788.16(a)(4) and 788.14(b)(4)	§ 773.27(b)(2)(iii)
(b)(2)(iv)	§ 788.14(a)(2)	§ 773.27(b)(2)(iv)
(b)(2)(v)	§ 788.16(a)(5)	§ 773.27(b)(2)(v)
(b)(3)	§ 788.14(b)(1)	§ 773.27(b)(3)
(b)(4)	§ 788.14(a)(1) and (b)(2)	§ 773.27(b)(4)
(c)(1)	§ 788.16(a)	
(c)(1)(i)	§ 788.16(a)(1)	§ 773.27(c)(1)(i)
(c)(1)(ii)	§ 788.16(a)(2)	§ 773.27(c)(1)(ii)
(c)(1)(iii)	§ 788.16(a)(3)	§ 773.27(c)(1)(iii)
(c)(1)(iv)		§ 773.27(c)(1)(iv)
(c)(1)(v)	§ 788.16(a)(4)	§ 773.27(c)(1)(v)
(c)(1)(vi)	§ 788.16(a)(5)	§ 773.27(c)(1)(vi)
(c)(2)	§ 788.16(b)	§ 773.27(c)(2)
(c)(3)	§ 788.14(b)(3)	§ 773.27(c)(3)
(d)	§ 788.15	§ 773.27(d)
(e)	§ 788.16(c)	§ 773.27(e)
(f)	§ 788.16(d)	§ 773.27(f)
§774.17:		
(a)	§ § 788.17 intro and 788.18(a)(3)	§ 773.29(a)
(b)	§ 788.18(a)	§ 773.29(b)
(b)(1)	§ 788.18(a)(2)	§ 773.29(b)(2)
(b)(1)(i)	§ 788.18(a)(2)(i)	§ 773.29(b)(2)(i)
(b)(1)(ii)		§ 773.29(b)(2)(ii)
(b)(1)(iii)	§ 788.18(a)(2) (iii) and (iv)	§ 773.29(b)(2)(iii)
(b)(2)	§ 788.18(b)(1)	§ 773.29(b)(3)
(b)(3)	§ 788.18 (a)(1) and (c)(2)	§ 773.29(b)(1)
(c)	§ 788.18(b)(2)	§ 773.29(c)
(d)	§ 788.18(c)	§ 773.29(d)
(d)(1)	§ 788.18(c)(1)	§ 773.29(d)(1)
(d)(2)	§ 788.18(c)(2)	§ 773.29(d)(2)
(d)(3)	§ 788.18(c)(1)	§ 773.29(d)(3)
(e)(1)	§ 788.11(c)	
(e)(2)		
(f)	§ 788.18(c)(3)	§ 773.29(e)

Final Part 775

§ 775.1	§ 787.1	§ 773.1
§ 775.11:		
(a)	§ 787.11(a)	§ 773.21(a)
(b)(1)	§ 787.11(b)(1)	§ 773.21(a)(1)(i)
(b)(2)	§ 787.11(b)(2)	§ 773.21(a)(1)(ii)
(b)(2)(i)	§ 787.11(b)(2)(i)	§ 773.21(a)(1)(ii)(A)
(b)(2)(ii)	§ 787.11(b)(2)(ii)	§ 773.21(a)(1)(ii)(B)
(b)(2)(iii)	§ 787.11(b)(2)(iii)	§ 773.21(a)(1)(ii)(C)
(b)(2)(iv)	§ 787.11(b)(2)(iv)	§ 773.21(a)(1)(ii)(D)
(b)(3)(i–iii)	§ 787.11(b)(3)(i–iii)	§ 773.21(a)(1)(iii)(A–C)
(b)(4)	§ 787.11(b)(4)	§ 773.21(a)(1)(iv)
(b)(5)	§ 787.11(b)(5)	§ 773.21(a)(1)(v)

Final Part 773

Final rule	Previous rule	Proposed rule
(c)	§ 787.11(c)	§ 773.21(a)(2)
§ 775.13:		
(a)	§ 787.12(a)	§ 773.21(b)
(a)(1)	§ 787.12(a)(1)	§ 773.21(b)(1)(i)
(a)(2)	§ 787.12(a)(2)	§ 773.21(b)(1)(ii)
(b)	§ 787.12(b)(1)	§ 773.21(b)(2)
(c)	§ 787.12(b)(2)	§ 773.21(b)(3)

Final Part 777

§ 777.1	§§ 771.1 and 771.2	§ 775.1
§ 777.10		§ 775.10
§ 777.11:		
(a)(1)	§ 771.23(b)	§ 775.11(a)(1)
(a)(2)	§ 771.23(b)	§ 775.11(a)(2)
(a)(3)	§ 771.23(a)	§ 775.11(a)(3)
(b)	§ 771.23(b)	§ 775.11(b)
(c)	§ 771.27	§ 775.11(c)
§ 777.13:		
(a)	§ 771.23(c)(1-3)	§ 775.13(a)
(b)		§ 775.13(b)
§ 777.14:		
(a)	§ 771.23(e)(1)	
(b)	§ 771.23(e)(2)	
(b)(1)	§ 771.23(e)(2)(i)	
(b)(2)	§ 771.23(e)(2)(ii)	
(b)(3)	§ 771.23(e)(2)(iii)	
(b)(4)	§ 771.23(e)(2)(iv)	
§ 777.15:		
intro	§ 771.23(a)	§ 775.15 intro
(a)	§ 771.23(a)	§ 775.15(a)
(b)	§ 771.23(a)	§ 775.15(b)
§ 777.17	§ 771.25	§ 775.17

Final Part 778

§ 778.1	§§ 778.1, 778.2, 778.4, 778.11 and 782.1-782.11.	§ 778.1
§ 778.10		§ 778.10
§ 778.13:		§ 778.13:
(a)	§§ 778.13(b) and 782.13(b)	(a)
(b)	§§ 778.13(a)(1, 5 and 6) and 782.13(a)(1, 5 and 6).	(b)
(c)(1)	§§ 778.13 (b)(1-2) and (c) and 782.13 (b)(1-2) and (c).	(c)(1-2)
(c)(2)	§§ 778.13 (b)(3) and 782.13 (b)(3)	(c)(3)
(d)	§§ 778.13(d) and 782.13(d)	(d)
(e)	§§ 778.13(a)(2-4) and 782.13(a)(2-4)	(e)
(f)	§§ 778.13(e) and 782.13(e)	(f)
(g)	§§ 778.13(f) and 782.13(f)	(g)
(h)	§§ 778.13(g) and 782.13(g)	(h)
§ 778.14:		§ 778.14:
(a)	§§ 778.14(a) and 782.14(a)	(a)
(a)(1)	§§ 778.14(a)(1) and 782.14(a)(1)	(a)(1)
(a)(2)	§§ 778.14(a)(2) and 782.14(a)(2)	(a)(2)
(b)	§§ 778.14(b) and 782.14(b)	(b)
(b)(1)	§§ 778.14(b)(1) and 782.14(b)(1)	(b)(1)
(b)(2)	§§ 778.14(b)(2) and 782.14(b)(2)	(b)(2)
(b)(3)	§§ 778.14(b)(3) and 782.14(b)(3)	(b)(3)
(b)(4)	§§ 778.14(b)(4) and 782.14(b)(4)	(b)(4)
(b)(5)	§§ 778.14(b)(5) and 782.14(b)(5)	(b)(5)
(c)	§§ 778.14(c) and 782.14(c)	(c)
(c)(1)	§§ 778.14(c)(1) and 782.14(c)(1)	(c)(1)
(c)(2)	§§ 778.14(c)(2) and 782.14(c)(2)	(c)(2)
(c)(3)	§§ 778.14(c)(3) and 782.14(c)(3)	(c)(3)
(c)(4)	§§ 778.14(c)(4) and 782.14(c)(4)	(c)(4)
(c)(5)	§§ 778.14(c)(5) and 782.14(c)(5)	(c)(5)
§ 778.15:		§ 778.15:
(a)	§§ 778.15(a) and 782.15(a)	(a)

Derivation Table

Final Part 773

Final rule	Previous rule	Proposed rule
(b)(1)	§§ 778.15(b)(1) and 782.15(b)(1)	(b)(1)
(b)(2)	§§ 778.15(b)(2) and 782.15(b)(2)	(b)(2)
(b)(3)	§§ 778.15(b)(3) and 782.15(b)(3)	(b)(3)
(c)	§§ 778.15(c) and 782.15(c)	(c)
§ 778.16		§ 778.16
(a)	§§ 778.16(a) and 782.16(a)	(a)
(b)	§§ 778.16(b) and 782.16(b)	(b)
(c)	§§ 778.16(c) and 782.16(c)	(c)
§ 778.17		§ 778.17
(a)	§§ 778.17(a) and 782.17(a)	
(b)	§§ 778.17(b) and 782.17(b)	intro
(b)(1)	§§ 786.25(a)(1)	(a)
(b)(2)	§§ 786.25(a)(2)	(b)
§ 778.18	§§ 778.18 and 782.18	§ 778.18
§ 778.21	§§ 778.21 and 782.21	§ 778.21
§ 778.22		§ 778.22

An additional table below shows the changes made to the previous permitting rules and to what sections some of their provisions have been moved.

PREVIOUS RULE AND CHANGES

Part 770

770.1—removed; part of § 773.1.
770.2—removed.
770.4—removed.
770.5—removed; definitions in § 701.5.
770.6—removed.
770.11—removed.
770.12—removed; intro and (c) in § 773.12.

Part 771

771.1—removed; part of §§ 773.1 and 777.1.
771.2—removed; part of § 777.1.
771.11—removed; provisions in § 773.11(a).
771.13—removed; provisions in § 773.11(b).
771.15—removed; provisions in § 773.11(c).
771.17—removed; provisions in § 773.11(d).
771.19—removed; provisions in § 773.17(b) and (c).
771.21—removed; provisions in §§ 773.11(b)(2)(i), 774.13(b)(1) and 774.15(b)(1).
771.23—removed; provisions in §§ 777.11-777.15.
771.25—removed; provisions in § 777.17.
771.27—removed; provisions in § 777.11.

Part 776—revised in another rulemaking for coal exploration.

Part 778

778.1—revised.
778.2—removed; included in § 778.1.
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